TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1928

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 21, 1929

CERTIORARI GRANTED APRIL 15, 1929

(34,020)

(34,020)

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[fol. 1] [Caption omitted]

[fol. 2]

IN UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF WISCONSIN

COMPLAINT—Filed Apr. 2, 1928

The complaint of the plaintiff by Miller, Mack & Fairchild, his attorneys, for cause of action against the defendant, respectfully shows to the Court and alleges that:

1. The Bankers Joint Stock Land Bank of Milwaukee at the times hereinafter mentioned was and now is a joint stock land bank duly organized and existing under and by virtue of the Federal Farm Loan Act of the United States with a capital of $1,200,000.00 divided into 12,000 shares of the par value of $100.00 each, all of which were and are issued and outstanding.

2. The plaintiff, Howard Greene, is and was at all times subsequent to the 1st day of July, 1927, the statutory Receiver of the Bankers Joint Stock Land Bank of Milwaukee, duly appointed and qualified pursuant to an order of the Federal Farm Loan Board, entered on the 1st day of July, 1927, under the authority of Section 29 of the Federal Farm Loan Act, which said order directs said plaintiff, Howard Greene, as such Receiver, to take possession of the books, records and assets of every description of said bank; to collect and account for all debts due and claims belonging to it, and to take such other steps as may be proper and necessary in the premises and as the Federal Farm Loan Board may from time to time direct or approve in accordance with the provisions of the Federal Farm Loan Act.

3. The defendant is a citizen of the State of Wisconsin and a resident of the City of Milwaukee in the Eastern District of said State of Wisconsin.

4. On and prior to the 1st day of July, 1927, the defendant was and ever since has been the holder of fifty (50) shares of stock of said Bankers Joint Stock Land Bank of Milwaukee.

5. By order dated the 11th day of January, 1928, a copy of which is hereunto annexed, made a part hereof and marked "Exhibit A," the Federal Farm Loan Board levied an assessment and requisition upon the shareholders on July 1st, 1927, of the Bankers Joint Stock Land Bank of Milwaukee in the sum of $1,200,000, being the aggregate amount of the par value of the capital stock of said bank, to be paid by such shareholders ratably on or before the 1st day of March, 1928, and by said order made demand [fol. 3] upon each and every one of said shareholders for the amount of the par value of each and every one of their respective shares of the capital stock of said bank, and directed the plaintiff, Howard Greene, as such Receiver of said bank, to take all necessary proceedings by suit or otherwise to enforce the said liability of the said shareholders.

6. Pursuant to said order aforesaid, the plaintiff duly made demand upon the defendant that he pay the assessment upon the said fifty (50) shares of stock so held by him in said Bankers Joint Stock Land Bank of Milwaukee on the 1st day of July, 1927, in the sum of Five Thousand Dollars ($5,000), being the aggregate amount of the par value of said capital stock so held by said defendant, but said defendant has wholly failed, refused and neglected to make payment of said assessment, or any part thereof, and said assessment remains wholly unpaid and unsatisfied.

7. By reason of the facts aforesaid, said defendant is indebted to the plaintiff, Howard Greene, Receiver, in the sum of Five Thousand Dollars ($5,000), with interest thereon at the rate of six per cent per annum from and after the 1st day of March, 1928.

Wherefore, plaintiff prays judgment against said defendant for Five Thousand Dollars ($5,000), together with interest thereon from the 1st day of March, 1928, at the rate of six per cent per annum, and the costs and disbursements of this action.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

[fol. 4] *Duly sworn to by Howard Greene. Jurat omitted in printing.*

EXHIBIT A TO COMPLAINT

Treasury Department, Washington, Federal Farm Loan Bureau

Assessment upon Shareholders of the Bankers Joint Stock Land Bank of Milwaukee, Milwaukee, Wisconsin

January 11, 1928.

To whom it may concern:

Whereas, upon consideration of the report submitted on January 9, 1928, by the Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Howard Greene of Milwaukee, Wisconsin, appointed on July 1, 1927, by the Federal Farm Loan Board pursuant to the provisions of Section 29 of the Federal Farm Loan Act, and a valuation of the assets of said Bank in his hands as such Receiver, it appears to the satisfaction of the Federal Farm Loan Board that for the payment of the debts of the said Bankers Joint Stock Land Bank of Milwaukee it is necessary to enforce the individual liability under section 16 of the Federal Farm Loan Act of the shareholders of said bank;

Now, therefore, by virtue of the powers vested in it by [fol. 5] law, the Federal Farm Loan Board hereby makes and levies an assessment and requisition upon the shareholders on July 1, 1927, of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000, being the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the 1st day of March, 1928, and hereby makes demand upon each and every one of said shareholders for the amount of the par value of each and every one of said shareholders for the amount of the par value of each and every one of his respective shares of the capital stock of said Bank; and hereby directs the said Receiver to take all necessary proceedings, by suit or otherwise, to enforce the said liability of the said shareholders.

The Receiver is authorized to grant an extension of time, without interest, to any shareholder who pays 25 per cent of the said assessment on or before March 1, 1928, and who gives a written obligation, satisfactorily guaranteed, to pay 25 per cent additional on or before April 1, 1928, 25

per cent additional on or before May 1, 1928, and the remaining 25 per cent on or before June 1, 1928.

In witness whereof the said Federal Farm Loan Board has caused this instrument to be executed at the City of Washington, in the District of Columbia, this 11th day of January, 1928.

Federal Farm Loan Board, by Chester Morrill, Secretary and General Counsel.

IN UNITED STATES DISTRICT COURT

PRÆCIPE FOR SUMMONS—Filed Apr. 2, 1928

To B. H. Westfahl, Esquire, Clerk of the above-named Court:

Please issue a summons in the above entitled action, providing for service thereof, with a copy of the complaint attached thereto, upon the above named defendant.

Dated March 31st, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

Postoffice address: 1504 First Wisconsin National Bank Bldg., Milwaukee, Wisconsin.

[fol. 6] IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN

The President of the United States of America to the said Defendant:

You a.e hereby summoned to appear within twenty days after service of this summons, exclusive of the day of service, and defend the above-entitled action in the court aforesaid; and in case of your failing so to do, judgment will be rendered against you according to the demand of the complaint, of which a copy is herewith served upon you.

The Marshal of said District is hereby commanded to serve this summons, and make due return thereto.

Witness, the Honorable Ferdinand A. Geiger, Judge of the District Court of the United States, for the Eastern District of Wisconsin, at the City of Milwaukee, in the said District, this 2nd day of April, in the year of our Lord one thousand nine hundred and twenty-eight and of the Independence of the United States the 152nd.

(Signed) B. H. Westfahl, Clerk. Miller, Mack & Fairchild, Plaintiff's Attorneys.

P. O. address: Milwaukee, Wis.

Marshal's Return

Served on the within-named J. R. Wheeler by showing him this summons and complaint, and by delivering to him personally a copy thereof, this 4th day of April, A. D. 1928 at Milwaukee, Wis.

Fees:

Service	2.00
Copies	....
Travel	.14
	$2.14

R. J. White, Marshal, by G. W. Hayden, Deputy.

[fol. 7] In United States District Court

Demurrer—Filed Apr. 23, 1928

Now comes the above named defendant by Quarles, Spence & Quarles, Newman, Poppenhusen, Stern & Johnston, and Bulkley, Hauxhurst, Jamison & Sharp, his attorneys, and demurs to the complaint herein on the ground that it appears upon the face thereof that said complaint does not state facts sufficient to constitute a cause of action.

Quarles, Spence & Quarles, Newman, Poppenhusen, Stern & Johnson, and Bulkley, Hauxhurst, Jamison, & Sharp, Defendant's Attorneys.

Dated April 23, 1928.

IN UNITED STATES DISTRICT COURT

Before the Honorable Ferdinand A. Geiger, Judge

ORDER SUSTAINING DEMURRER—Filed May 16, 1928

The demurrer of the defendant, J. R. Wheeler to the complaint having been heretofore argued and submitted, on consideration thereof,

It is ordered by the Court that said demurrer be and the same hereby is sustained.

IN UNITED STATES DISTRICT COURT

EXCEPTION TO ORDER SUSTAINING DEMURRER—Filed May 21, 1928

Now comes the plaintiff and excepts to the order of the court in the above entitled matter dated May 16, 1928, sustaining the demurrer of the defendant, J. R. Wheeler, to the complaint herein.

Dated this 21st day of May, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

[fol. 8] The above exception is hereby allowed this 21 day of May, 1928.

F. A. Geiger, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

Before Honorable Ferdinand A. Geiger, Judge

ORDER FOR JUDGMENT—Filed June 2, 1928

This day came the parties by their counsel, Messrs. Miller, Mack & Fairchild, appearing for the plaintiff, and Messrs. Quarles, Spe[illegible] & Quarles for the defendant, and the motion of the d[illegible]lant for judgment dismissing the above titled action for [illegible]sts came on to be heard, and the

plaintiff having elected to stand on his complaint and having objected to the entry of this order,

Now Therefore on consideration thereof,

It is ordered by the Court, that the motion of the defendant be, and the same is hereby granted, and that judgment be entered in favor of the defendant dismissing the action with costs.

[fol. 9] IN UNITED STATES DISTRICT COURT

EXCEPTION TO ORDER FOR JUDGMENT—Filed June 7, 1928

Now comes the plaintiff and excepts to the order of the court in the above entitled action entered on June 2, 1928, ordering judgment in favor of the defendant and dismissing said action with costs.

Dated this 7th day of June, 1928.

Miller, Mack & Fairchild, Attorneys for Plaintiff.

The above exception is hereby allowed this 7th day of June, 1928.

F. A. Geiger, District Judge.

IN UNITED STATES DISTRICT COURT

JUDGMENT—June 2, 1928

The above entitled action having come on for trial upon the demurrer to the complaint herein before this court Hon. F. A. Geiger, judge presiding, on the fifth day of May, 1928, and the court having heard the arguments of counsel and taken said matter under advisement, and having thereafter entered an order sustaining the demurrer to the complaint herein, and said plaintiff having elected to stand upon said complaint and not to amend the same, and judgment having been ordered,

Now, therefore, upon motion of Quarles, Spence & Quarles, attorneys for said defendant,

It is hereby ordered and adjudged that the above entitled action be and the same hereby is dismissed, and that said defendant do have and recover from said plaintiff the sum of $5.00, his costs and disbursements herein.

Witness the Hon. F. A. Geiger, judge of the United States District Court for the Eastern District of Wisconsin, at Milwaukee, Wisconsin, this 2nd day of June, 1928.

(Signed) B. H. Westfahl, Clerk.

[fol. 10] IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 29, 1928

To Quarles, Spence & Quarles, attorneys for the defendant, J. R. Wheeler, and B. H. Westfahl, clerk of the aforesaid court:

Please take notice, that the pr-intiff above named appeals to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment rendered by the above Court entered herein on the 2nd day of June, 1928, in favor of the defendant and against the plaintiff dismissing the complaint of the plaintiff, with costs, in favor of the defendant, and from the whole of said judgment.

Dated this 26th day of June, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

Endorsed as follows: Eastern District of Wisconsin: ss: I hereby certify and return that I served the within Notice of Appeals on the within named Quarles, Spence & Quarles, Attorneys for J. R. Wheeler, by delivering to and leaving with J. V. Quarles, personally, a true copy thereof, this 27th day of June, 1928, at Milwaukee, Wis. R. J. White, U. S. Marshal. By W. G. Garrett, Deputy.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed June 26, 1928

To the Honorable F. A. Geiger, Judge of the United States District Court for the Eastern District of Wisconsin:

The above named Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, feeling aggrieved by the judgment entered in the above entitled cause on the

2nd day of June, 1928, does hereby appeal from said judg-
[fol. 11] ment to the United States Circuit Court of Appeals for the Seventh Circuit, for the reasons set forth in the assignment of errors filed herewith, and he prays that his appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said judgment was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Seventh Circuit under the rules of such court, in such cases made and provided.

And your petitioner further prays that the proper order relating to the security to be required of him be made.

Dated this 26th day of June, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS AND PRAYER FOR REVERSAL—Filed June 26, 1928

Now comes the plaintiff, Howard Greene, receiver of the Bankers Joint Stock Land Bank of Milwaukee, and for his assignment of errors in the above entitled matter says that in the proceedings in this cause and in the rendition of final judgment therein there is manifest error in that:

1. The United States District Court for the Eastern District of Wisconsin erred in sustaining the demurrer to the complaint filed by the plaintiff herein, which demurrer is based on the ground that it appears upon the face of the complaint that said complaint does not state facts sufficient to constitute a cause of action.

2. The United States District Court for the Eastern District of Wisconsin erred in ordering the entry of judgment dismissing the comulaint upon the sustaining of said demurrer.

3. The United States District Court for the Eastern District of Wisconsin erred in entering judgment dismissing the complaint upon the sustaining of said demurrer.

Wherefore, the plaintiff, Howard Greene, prays that the judgment of the District Court of the United States for the Eastern District of Wisconsin may be reversed and that this [fol. 12] cause may be remanded with directions that said errors may be corrected to the end that justice may be done in the premises.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal—Filed June 26, 1928

On motion of the plaintiff, Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee,

It is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the judgment heretofore entered herein on the 2nd day of June, 1928, be and the same is hereby allowed, and that a transcript of the record, proceedings and documents had therein, duly authenticated, be forthwith transmitted to said Circuit Court of Appeals.

It is further ordered, that the bond on appeal be fixed at the sum of Two Hundred Fifty Dollars ($250.00).

Dated this 26 day of June, 1928.

F. A. Geiger, District Judge.

[fol. 13] Bond on Appeal for $250.00, approved and filed June 26, 1928, omitted in printing.

[fol. 14] In United States District Court

Præcipe for Record—Filed June 26, 1928

To B. H. Westfahl, clerk of the above-named court:

Please transmit to the Circuit Court of Appeals for the Seventh Circuit the following papers in the above entitled action, to-wit:

Præcipe for Summons, Summons properly endorsed with the Marshal's return, Complaint, Demurrer, Order Sustaining Demurrer, Exception to Order Sustaining Demurrer, Order for Judgment, Exception to Order for Judgment, Judgment, Notice of Appeal, Petition for Appeal, Assignment of Errors and Prayer for Reversal, Order allowing Appeal, Bond and Approval, Citation and Admission of Service, Præcipe, Certificate of Clerk authenticating the Record.

Said transcript to be prepared as required by law and [fol. 15] the rules of this Court and the rules of the United States Circuit Court of Appeals for the Seventh Circuit.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Plaintiff. Miller, Mack & Fairchild, of Counsel.

Clerk's certificate to foregoing transcript omitted in printing.

[fols. 16 & 17] Citation, in usual form, showing service on J. V. Quarles, filed June 29, 1928, omitted in printing.

[fol. 18] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 19] Appearances of counsel omitted in printing.

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH JUDICIAL CIRCUIT

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Plaintiff and Appellant,

v.

J. R. WHEELER, Defendant and Appellee

STIPULATION RE PRINTING—Filed July 27, 1928

Whereas appeals in nine actions by Howard Greene as Receiver of the Bankers Joint Stock Land Bank of Milwaukee, are pending in the United States Circuit Court of Appeals for the Seventh Judicial Circuit as follows:

[fol. 20] Howard Greene, Receiver, v. George D. Bartlett; Howard Greene, Receiver, v. Geo. D. Bartlett and J. S. Bartlett;
Howard Greene, Receiver v. Leo Brucker;
Howard Greene, Receiver, v. E. W. Freischmidt;
Howard Greene, Receiver, v. Carrie Ley;
Howard Greene, Receiver, v. H. A. Moehlenpah;
Howard Greene, Receiver, v. Chas. H. Thornton;
Howard Greene, Receiver, v. W. H. Wasweyler, and
Howard Greene, Receiver, v. J. R. Wheeler,

It is hereby stipulated and agreed by and between the parties to the above entitled actions, by their respective counsel, that an order may be entered in all but one of said actions, to wit: Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee v. J. R. Wheeler, directing the Clerk of the above entitled Court to withhold the printing of the record and placing said appeals on the calendar of this Court for hearing until notice of and request therefor by counsel for one of the parties thereto to the other and to the Clerk of this Court, which request shall be made subsequent to hearing and disposition by this Court of said action entitled, Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee v. J. R. Wheeler.

Dated this 24th day of July, 1928.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Counsel for Plaintiff and Appellant in each of said nine actions. Quarles Spence & Quarles, Counsel for Dedenfant and Appellee in each of said nine actions.

[File endorsement omitted.]

Appearance of counsel omitted in printing.

[fol. 21] In United States Circuit Court of Appeals

[Title omitted]

Motion for Leave to File Brief, Amicus Curle—Filed Sept. 28, 1928

Now comes Louis Quarles and Malcom K. Whyte as attorneys for Hugh Grove, et al., a Bondholders Protective

Committee under agreement dated July 15, 1927, and pray leave of the Court to file a short brief, amicus curiæ, to be considered on the above appeal. The said Bondholders Protective Committee has a substantial interest in the controversy for the reason that it owns in excess of $10,350,-
[fol. 22] 000.00 out of a total of $15,771,600.00 of the outstanding bonds of the Bankers Joint Stock Land Bank of Milwaukee.

Louis Quarles, Malcom K. Whyte. Louis Quarles and Malcom K. Whyte, Attorneys for H. W. Grove et al., Bondholders Protective Committee under agreement dated July 15, 1927.

Dated September 27, 1928.

We consent that Louis Quarles and Malcom K. Whyte may file a brief, Amicus Curiae, as prayed for above.

Edwin S. Mack, Arthur W. Fairchild, Leon F. Foley, Attorneys for Howard Greene, Receiver of Bankers Joint Stock Land Band of Milwaukee, Wisconsin, Appellant.

[File endorsement omitted.]

In United States Circuit Court of Appeals

[Title omitted]

Order Granting Leave to file Brief, Amicus Curiæ—Sept. 28, 1928

Now this day comes Mr. Louis Quarles and Mr. Malcom K. White, as attorneys for Hugh Grove, et al., a Bondhold-
[fol. 23] ers' Protective Committee under agreement dated July 15, 1927, and pray leave of the Court to file a brief amicus curiæ, to be considered on this appeal, counsel for appellant consenting thereto.

On consideration thereof leave is hereby granted accordingly.

IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER SETTING CAUSE—Oct. 2, 1928

It is ordered by the Court that this cause be, and the same is hereby set down for hearing on Tuesday, October 16, 1928.

[fol. 24] Minute entry of argument and submission October 16, 1928, omitted in printing.

[fol. 25] IN UNITED STATES CIRCUIT COURT OF APPEALS, SEVENTH CIRCUIT

No. 4065

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Appellant.

vs.

J. R. WHEELER, Appellee

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Before Alschuler, Evans, and Page, Circuit Judges, December 13, 1928

OPINION BY PAGE, Cir. J.—Filed Dec. 13, 1928

The Federal Farm Loan Board (here called Board) made an assessment against the stockholders of an insolvent Joint Stock Land Bank under Section 812, Title 12, United States Code Annotated.* The District Court sustained the demurrer to the complaint and plaintiff elected to stand on his complaint. The complaint alleged an assessment and direction by the Board to the receiver to collect.

*Sections referred to herein, unless otherwise designated, will be found in Title 12, U. S. Code Ann. For original Farm Loan Act, see 39 U. S. Statutes at Large, p. 360.

Appellee's position is: (a) that the Board is without power to make such assessment or enforce the personal liability of stockholders; (b) that a receiver has no legal right to maintain this action.

It is first urged that the powers of the Board are limited to those enumerated in Section 831, plus such supervisory powers as are incident thereto, set out in clauses (i) and (j) thereof. So many powers are given to the Board by the Act which are not found in Section 831 that we must hold the powers of the Board are not so limited. To illustrate: power to discharge certain employes is found in Section 831, but no power of appointment is there given, the power to appoint some of the officers there specified being found in Section 656; the very important power to find and declare insolvency and to appoint receivers, given by Sec-
[fol. 26] tion 961, is not found in Section 831.

The meaning of the provisions of the Act must be gained not only from its words but also from its purposes. The purposes stated in the title are:

"To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States and for other purposes."

The Act provides the machinery by which the purposes of the Act are to be accomplished. From those purposes, it appears that Congress did not intend merely to pass a law under which Federal Land Banks, National Loan Associations, and Joint Stock Land Banks might be organized, but that it also purposed to see to it that the whole undertaking, so vast that it was to be available in every community in every state of the Union, was at all times conducted under the supervision, direction and control of the Board, during the organization and establishment of those instrumentalities and during their successful operation.

The Act shows that it was anticipated that there would be cases of insolvency and failure; that in such cases the Association or Bank would cease to function normally; that if creditors, probably widely scattered, were to be protected and debtors compelled to meet their obligations, some agency, other than the Bank or the Association, would have

to intervene. That it was one of the purposes of the Act to extend the supervision of the Board so as to cover such cases and supply such agency is evidenced by the fact that it was authorized to find and declare insolvency and to appoint receivers. The moneys collected by the receiver and deposited in the Treasury are subject to the order of the Board. As one of the purposes of the Act, it was provided that, in addition to the capital stock and general assets, there should be an individual liability of stockholders, available for the payment of debts in case of insolvency.

Section 651 provides that there shall be established in the Treasury Department a Federal Farm Loan Bureau, "charged with the execution of this chapter." To "exe- [fol. 27] cute" means: " to follow out into effect" (Oxford Dict.); "to carry through so as to effect, pursue to the end, accomplish, finish, put into force" (Standard Dict.). If one of the purposes of the Act is to carry insolvent concerns through liquidation and pay their debts, then "execution" cannot be complete until that purpose has been accomplished. Inasmuch as the Federal Farm Loan Bureau can only act or find expression through the Board, it seems to follow, necessarily, that the provision in Section 651, that the Act shall be executed under the general supervision of the Board, must mean that the Board is to execute the Act.

Speaking of the Federal Farm Loan Act, Section 641 provides: "Its administration shall be under the direction and control of" the Board. "Administration" means the act of administering, especially direction or oversight of any office, service or employment, etc., management of public affairs. "Direction and control" import authority to command what shall be done, and to require obedience to those commands. It is to be noted that it is not only solvent and going concerns that are placed under the supervision, direction and control of the Board, but the whole Act is to be executed and administered under the supervision, direction and control of the Board. These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes of the act, one of which is to pay the debts of insolvent concerns. (Cook County Nat. Bk. v. U. S., 107 U. S. 445, 448.)

Appellee's argument that the Board is without power to make such assessments is based wholly upon the as-

sumption that its powers are only those found in Section 831, and that the provisions in paragraphs (i) and (j) of that section do not relate to any other supervision than that incidental to the powers expressly enumerated in that section. Appellee concedes that if Congress had not so enumerated the powers, but had made a general grant, covering the entire field, there would be force in appellant's argument that the power to assess is incidental to the general powers of the Board. Section 831 (i) and (j) reads:

"(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint-stock land banks herein provided for.
[fol. 28] "(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter." *

It would be a very narrow construction to hold that the powers in (i), "to exercise general supervisory authority" mean that the Board has supervisory authority in respect only to the things enumerated in Section 831, and that it has no supervisory authority with respect to the many other powers given in the Act. It would be a perversion of the language of (j) to hold that the Board was given incidental powers as to the specific things mentioned in Section 831, but that it was given none with respect to the many powers granted to it in the other sections of the Act.

We have above pointed out: (a) that the powers in Section 831 are far from being all of the powers vested in the Board by the Act; (b) that in Sections 641 and 651 there are to be found, first, the general provision that the administration of the Act shall be under the direction and control of the Board, and, second, that the execution of the Act, charged upon the Farm Loan Bureau, shall be under the general supervision of the Board.

Under the National Banking Act, called Banking Act, there is no specific provision for the making of an assessment. That matter was before the Supreme Court in 1869 in Kennedy v. Gibson, 8 Wall. 498, and the right was upheld.

Appellee's contention that the receiver has no right to maintain this suit is based very largely upon the fact that

*In the original Act the last word in clause (j) is "act."

Congress, in Section 961, copied a part, and omitted a part, of Section 192 of the Banking Act. Below are found those parts of the two sections brought under discussion by appellee (the parts in *italics* in the Farm Loan Act are not found in the Banking Act, and the italicized words at the end of the quotation from the Banking Act were omitted from the Farm Loan Act):

[fols. 29 & 30] FARM LOAN ACT

Such receiver, under the direction of the *Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, *with the approval of the Federal Farm Loan Board,* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such associaiton, on such terms as the *Federal Farm Loan Board of said* court shall direct.

BANKING ACT

Such receiver, under the direction of the *Comptroller,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.*

[fol. 31] It is to be noted that Section 961, a part of which is quoted above, by its terms, relates only to National Farm Loan Associations, but by the provisions of Section 963 is made to apply to Joint Stock Land Banks. It is also to be noted that Sections 961 to 965 are Section 29 of the original Farm Loan Act, and the words in Section 963 "and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations," would be meaningless if not read with refer-

ence to original Section 29, because there are no such provisions in Section 963.

It is true the omission standing alone may indicate an intention to withhold from receivers under the Farm Loan Act the right of initiative in bringing suits against stockholders, given in the Banking Act, and if we found no other provision authorizing the Board to direct such actions, appellee's contention would prevail. While a court may not read into a statute language or purposes not there found, yet if that common-sense rule laid down in U. S. v. Katz, 271 U. S. 354, is to control, such interpretation must be given to the words employed, if it can reasonably be done, as will enable the instrumentality employed (in this case, the Board) to effectively accomplish all the purposes of the statute. We do not think that because the right in question was not given to the receiver, as it was in the Banking Act, that it necessarily follows that the Board does not have the power.

There are many differences between the provisions relating to the powers of the Comptroller, found in the Banking Act, and those in the Farm Loan Act relating to the powers of the Board. The Banking Act adopted the method of enumerating the powers of the Comptroller, and although it has been held that he has incidental implied powers, for instance, the power to fix and direct the payment of the individual liability of stockholders (Casey v. Galli, 94 U. S. 673, 681,) we do not find in the Banking Act any provision like that in Section 641, namely "its administration shall be under the direction and control of the Board," or like the provisions of Section 831 (i) and (j), set out above. We find some powers expressly given the Comptroller that are not so expressly given to the Board.

It is pointed out that Section 192 of the Banking Act provides that the Comptroller shall give notice to prove claims and that Section 194 of that act provides for an allowance of claims, payment of dividends, and return of [fol. 32] any surplus to the stockholders, and it is argued that because those provisions are not in the Farm Loan Act it was intended that the receiver should have no power to enforce the stockholders' liability. We cannot agree that

that is a legitimate conclusion, because the presentation and allowance of claims, the payment of dividends, and the return of any surplus are necessary details in the administration of an insolvent estate, regardless of the stockholders' liability. Obviously, we think, the power to do those things was vested in the Board.

We find no purpose in the Farm Loan Act to give to the Board narrower powers than those given the Comptroller under the Banking Act. On the contrary, in Section 961 is found a provision broadening the Board's powers. It gives to the Board and the court control over certain acts that are by Section 192 of the Banking Act wholly under the control of the court.

In Kennedy v. Gibson, 8 Wall. 498, (505) the court said:

"The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carriers with it the power of removal. It is for the comptroller to decide when it is necessary to institute proceedings against the stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it."

All of those things were true, regardless of the question as to whether the receiver was authorized by the act to bring a suit to establish the individual liability of the stockholders.

In Richmond v. Irons, 121 U. S. 27 (48) the liquidation of a National Bank's affairs was involved. The court said:

"In the liquidation of such an association, those entrusted with its management occupy the relation of trustees, first for creditors, and the terms of that trust, implied by law, require them to reduce the assets of the association to money or its equivalent, and to pay out those assets or their proceeds equally among creditors."

And, again (p. 49):

"In the case of involuntary liquidation under the su- [fol. 33] pervision of the Comptroller of the Currency, the

receiver appointed by him is authorized and required, not only to collect and apply the proper assets of the bank to the payment of the debts, but also, so far as may be necessary, to enforce the individual liability of the shareholders. It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least, so closely connected with it as to constitute but one continuous transaction. When, in the case of voluntary liquidation, the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed. The intention of Congress evidently was to provide ample and effective remedies in all the specified cases for the protection of the public and the payment of creditors, by the application of the assets of the bank and the enforcement of the liability of the stockholders. Admitting that this liability is not strictly an asset of the bank, because it could not be enforced for its benefit as a corporation nor in its name, yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank towards the satisfaction of its obligations. The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank."

We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board, and that the language in Casey v. Galli, 94 U. S. 673, 681, applies:

"It is sufficient * * * that the comptroller has ordered that each stockholder shall pay to the receiver the par of his stock. This order cannot be controverted in a suit against the stockholder. It is conclusive upon him, and makes it his duty to pay. (Citing Kennedy v. Gibson, 8 Wall. 498.)"

[fol. 34] We are of opinion that the Board had the right to make the assessment and direct the receiver to bring this suit.

The judgment of the District Court is reversed.

[fol. 35] In United States Circuit Court of Appeals

[Title omitted]

4065

Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee,

vs.

J. R. Wheeler

Appeal from the District Court of the United States for the Eastern District of Wisconsin

Judgment—Dec. 13, 1928

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Wisconsin and was argued by counsel.

On consideration whereof it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby reversed with costs; and that this cause be, and the same is hereby remanded to the said District Court.

[fol. 36] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 37] Supreme Court of the United States

Order Allowing Certiorari—Filed April 15, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified

copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ; and that the case be, and the same is hereby, advanced and assigned for argument on Monday, October 7th, next.

Endorsed on cover: File No. 34,020. U. S. Circuit Court of Appeals, Seventh Circuit. Term No. 711. J. R. Wheeler, petitioner, vs. Howard Greene, receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin. Petition for writ of certiorari and exhibit thereto. Filed February 21st, 1929. File No. 34,020.

FILE COPY

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 39

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

HENRY JACKSON DARBY,
JOSEPH V. QUARLES,
LAWRENCE A. COLE,
Counsel for Petitioner.

(34,020)

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Supreme Court of the United States:

The petition of J. R. WHEELER respectfully shows to this Honorable Court:

1. That the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, at all the times hereinafter mentioned was and now is a Joint Stock Land Bank duly organized and existing under and by virtue of the Federal Farm Loan Act of the United States, with a capital of $1,200,000 divided into twelve thousand shares of the par value of one hundred dollars each, all of which are issued and outstanding.

2. That said Bank prior to the first day of July, 1927, was operating as such Joint Stock Land Bank at the city of Milwaukee in the state of Wisconsin. That on said day the Federal Farm Loan Board by its order appointed Howard Greene of the city of Milwaukee receiver for said Bankers Joint Stock Land Bank of Milwaukee under the authority conferred by Section 29 of the Federal Farm Loan Act.

3. That on said first day of July, 1927, said Howard Greene as such receiver took possession of the books, records and assets of every description of said Bank, and still has the same in his possession.

4. That on the eleventh day of January, 1928, the Federal Farm Loan Board made and levied an assessment and requisition upon the shareholders on July 1, 1927, of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000, the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the first day of March, 1928, and made demand upon each shareholder for the amount of the par value of the shares held by him, and directed to said receiver to take all necessary proceedings by suit or otherwise to enforce the liability of the said shareholders (R. 4).

5. That your petitioner is a citizen of the state of Wisconsin, and a resident of the city of Milwaukee in the Eastern District of said state.

6. That on and prior to the first day of July, 1927, your petitioner was and ever since has been the holder

of fifty shares of stock of said Bankers Joint Stock Land Bank of Milwaukee.

7. That said respondent made demand upon your petitioner for the sum of five thousand dollars ($5,000), being the aggregate amount of the par value of the capital stock so held by your petitioner, and upon failure of your petitioner to pay the same said respondent instituted an action in the District Court of the United States for the Eastern District of Wisconsin against your petitioner, to recover said sum (R. 2).

8. That your petitioner filed a general demurrer to the complaint in said action (R. 7), and after argument the demurrer to the complaint was sustained on the 16th day of May, 1928 (R. 7), and on the second day of June, 1928, the respondent having elected to stand upon his complaint, judgment was entered dismissing the action (R. 9).

9. That thereafter respondent took an appeal to the United States Circuit Court of Appeals for the Seventh Circuit (R. 10-12).

10. That said appeal was argued before said United States Circuit Court of Appeals on the 16th day of October, 1928. That said court on the 13th day of December, 1928 rendered its decision reversing the judgment of the United States District Court for the Eastern District of Wisconsin.

11. That a certified copy of the entire record of said case in the said Circuit Court of Appeals is hereby furnished, attached to and made a part of this application, and marked Exhibit "A."

12. That your petitioner is advised and believes that the said judgment of the United States Circuit Court of Appeals is erroneous, and that this Honorable Court should require the said case to be certified to it for its review and determination in conformity with the provisions of Section 240, Judicial Code.

13. That the said Circuit Court of Appeals held that the Federal Farm Loan Board had the right to make an assessment of and to enforce the personal liability of stockholders, and that the receiver appointed by them has the right to enforce the stockholders' personal liability by action at law. That the Federal Farm Loan Act does not grant to said Federal Farm Loan Board any right to make any assessment or collection of the personal liability of the stockholders, and the Act does not authorize the receiver to enforce such liability. That such personal liability is not an asset of the Bank, and does not pass to the receiver, but is a personal guaranty to creditors and can be enforced solely by them or their representative.

14. That said Federal Farm Loan Act, Section 961, is copied almost *verbatim* from the National Banking Act, Section 192, but omits the authority expressly granted by the Banking Act to enforce the individual liability of the stockholders.

15. That it is of the greatest importance to all stockholders and bondholders in Joint Stock Land Banks and Farm Loan Associations and Federal Land Banks, which are governed by the same law, to know whether this personal liability of the stockholders is enforce-

able by the Federal Farm Loan Board through its receiver, or by the creditors of the Bank through an equity action in accordance with the established practice.

16. That on June 30, 1928, according to the report of the Treasury Department upon Joint Stock Land Banks as of that date, there was outstanding capital stock in such Joint Stock Land Banks to the amount of $41,590,960.24, and bonds to the amount of $591,735,600.00 (P. 7). In the Federal Land Banks there was outstanding capital stock to the amount of $63,886,000.00 (*Ibid.* 1). In the Farm Loan Associations, according to the Eleventh Annual Report of the Federal Farm Loan Board for the year ending December 31, 1927, there were in existence and operating 4669 Farm Loan Associations. There have been 456,036 loans made by these associations (P. 71). Since a loan can only be made to a stockholder, that number approximately represents the number of stockholders of the Farm Loan Associations.

17. That there are three Joint Stock Land Banks in receivership, and in these proceedings the personal liability of stockholders may have to be enforced. That there are bonds outstanding and in default issued by said Banks to the amount of $61,518,600.00 (Report of Treasury Department, June 30, 1928 (P. 27), with outstanding stock of $5,250,000.00. In the Milwaukee Bank with $1,200,000 of capital stock, there are 488 stockholders. In the Kansas City Bank with $3,800,000 of capital stock, there are about 1,800 stockholders,

and in the Cincinnati Bank with $250,000 of capital stock, there are stockholders.

18. It is therefore a matter of great public interest to have the law definitely determined as to who has the right to enforce the personal liability of the stockholders of these Banks, and Associations. That this important question of federal law has not been, but should be settled by this court. That the federal question involved in this action was decided by the United States Circuit Court of Appeals in a way probably in conflict with applicable decisions of this court.

Wherefore your petitioner respectfully prays that a writ of certiorari may be issued out of and under the seal of this court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding the said court to certify and send to this court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the said Circuit Court of Appeals in said case, entitled Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Appellant, *vs.* J. R. Wheeler, Appellee, No. 4065, to the end that the said case may be reviewed and determined by this court as provided by Section 240, Judicial Code, and that your petitioner may have such further or other relief or remedy in the premises as this court may deem proper and in conformity with said provisions of the Judicial Code, and that the said judgment of the said

Circuit Court of Appeals in the said case, and every part thereof may be reversed by this Honorable Court.

J. R. WHEELER,
Petitioner.

HENRY JACKSON DARBY,
J. V. QUARLES,
LAWRENCE A. COLE,
Of Counsel.

STATE OF WISCONSIN,
Milwaukee County, ss:

J. R. WHEELER, being first duly sworn on oath, deposes and says that he is the petitioner in the above entitled action; that he has read the above and foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and that as to those matters he believes it to be true.

J. R. WHEELER.

Subscribed and sworn to before me this sixth day of February, 1929.

[SEAL.]

J. V. QUARLES,
Notary Public, Wisconsin.

Commission expires Oct. 4th, 1931.

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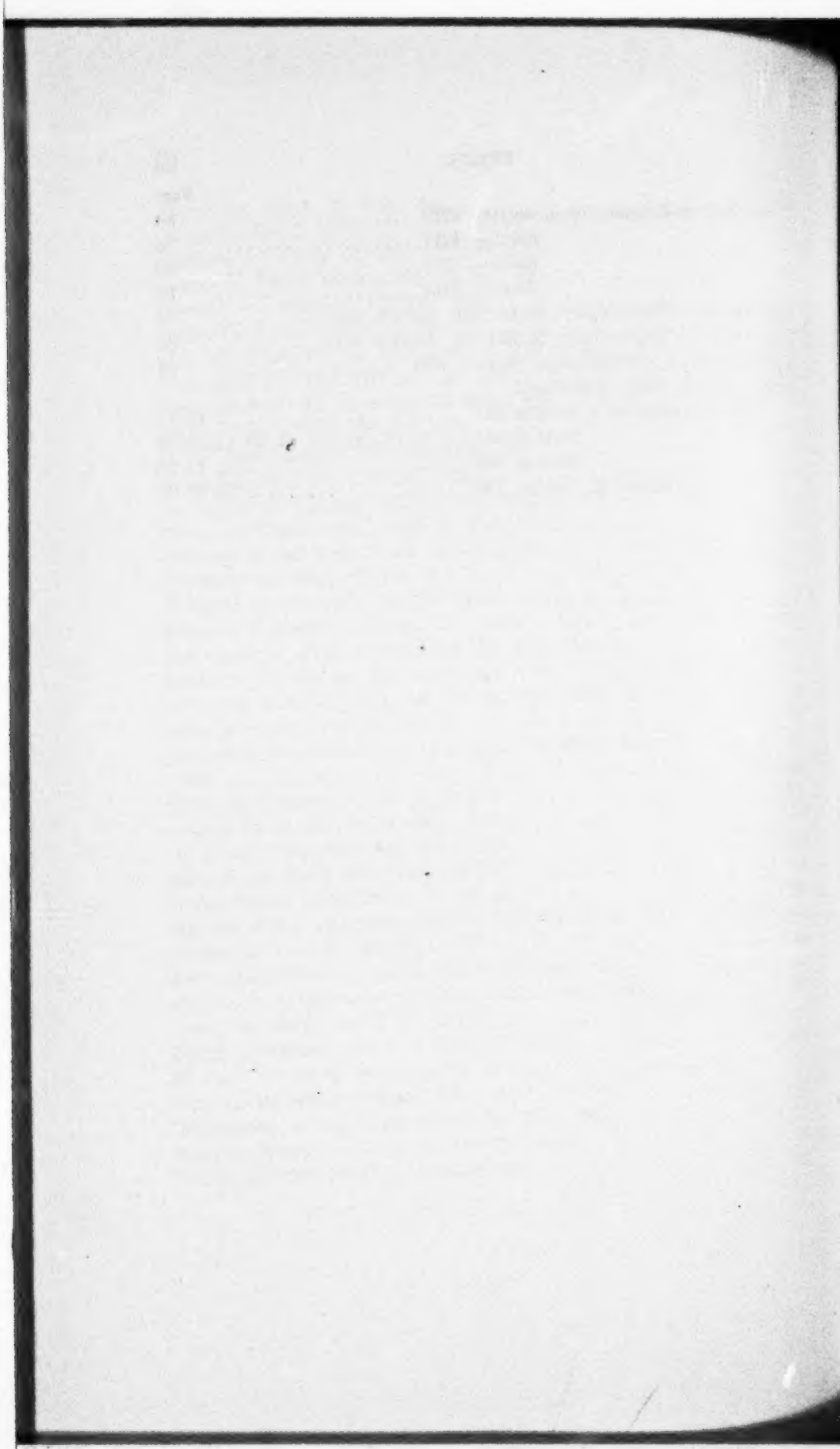

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

Brief of Petitioner for Writ of Certiorari to Review the Decision in the Case of Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, Against J. R. Wheeler, Reported in 29 Federal Reporter (2nd), 468.

The jurisdiction of this Honorable Court is invoked under Section 347 of the Judicial Code on the ground:

1. That the Circuit Court of Appeals for the Seventh Circuit has in this case decided an important question of federal law which has not been, but should be settled by this court.

2. That it has decided a federal question in a way probably in conflict with applicable decisions of this court.

The decision sought to be reviewed is dated December 13, 1928 (R. 24-33).

Statement of the Case.

This is an action brought in the United States District Court for the Eastern District of Wisconsin by the receiver of a Joint Stock Land Bank to recover the full amount of the defendant's statutory liability as a stockholder of the Joint Stock Land Bank in an action at law against the stockholder alone.

The complaint (R. 2) recites the appointment of the receiver, the levying of an assessment of the par value of the stock by the Federal Farm Loan Board, and a direction by it to the receiver to enforce the individual liability of the stockholders, demand and refusal to pay.

Issue was joined on the complaint by general demurrer (R. 7), which was sustained by the trial court, and judgment entered thereon on the second day of June, 1928 (R. 9). Respondent appealed from that judgment to the Circuit Court of Appeals for the Seventh Circuit (R. 10-12), which reversed the judgment of the trial court (R. 33).

Assignment of Errors.

1. The court erred in holding that the Farm Loan Board has the right to make an assessment upon

stockholders of Joint Stock Land Banks upon their personal liability as such stockholders.

2. The court erred in holding that the receiver appointed by the Farm Loan Board had the power to bring a suit at law to enforce the personal liability of stockholders.

Summary of Argument.

The statutory liability imposed upon stockholders in Joint Stock Land Banks to the amount of the stock held by them is a personal guaranty to creditors of the bank.

This liability is not an asset of the bank, and does not pass to the receiver appointed by the Farm Loan Board.

It can be enforced only by the creditors or their representatives in the absence of express statutory authority.

The Federal Farm Loan Act granted to the Farm Loan Board powers in connection with the Joint Stock Land Banks particularized and defined in great detail, but makes no mention of any power with regard to the personal liability of the stockholders, the filing and allowance or payment of claims, or the return of surplus to the stockholders, and no such powers are granted to its receiver.

The Federal Farm Loan Act is copied practically verbatim from the National Banking Act, with the exception that it omits the grant of power to the receiver to enforce the personal liability of stockholders.

This omission is intentional, and is made for the purpose of enabling the affairs of the bank to be litigated and wound up at its domicile, and to enable the stockholders to have a voice in the determination of their liabilities.

There is therefore no authority on the part of the Farm Loan Board to assess stockholders upon their personal liability, nor any power in their receiver to sue at law to collect it.

Where no specific provision is made in the law for the enforcement of the personal liability of stockholders, it must be enforced by a creditor's action in equity.

This is the method employed under the National Banking Act in case of voluntary liquidation.

It was intended by Congress that that method should be followed in cases of the Joint Stock Land Banks.

The Circuit Court of Appeals erred in holding that the power to enforce the liability of the stockholders and to liquidate the corporation, was implied.

ARGUMENT.

The Question at Issue.

The only question involved is whether the receiver of a Joint Stock Land Bank appointed by the Federal Farm Loan Board can maintain an action at law to enforce the payment of a one hundred per cent assessment upon stockholders of the bank levied by the Federal Farm Loan Board upon the receiver's preliminary report.

I. The Assessment by the Farm Loan Board.

The first step in the proceeding to enforce the liability of the stockholders was the action by the Federal Farm Loan Board shown in Exhibit A of the complaint (R. 4-5), reading:

> "To whom it may concern:
>
> Whereas, upon consideration of the report submitted on January 9, 1928, by the receiver of the Bankers Joint Stock Land Bank of Milwaukee, Howard Greene of Milwaukee, Wisconsin, appointed on July 1, 1927, by the Federal Farm Loan Board pursuant to the provisions of section 29 of the Federal Farm Loan Act, and a valuation of the assets of said bank in his hands as such receiver, it appears to the satisfaction of the Federal Farm Loan Board that for the payment of the debts of the said Bankers Joint Stock Land Bank of Milwaukee it is necessary to enforce the individual liability under Section 16 of the Federal Farm Loan Act of the shareholders of said Bank;
>
> Now, therefore, by virtue of the powers vested in it by law, the Federal Farm Loan Board hereby makes and levies an assessment and requisition upon the shareholders on July 1, 1927 of the said Bankers Joint Stock Land Bank of Milwaukee for $1,200,000.00, being the aggregate amount of the par value of the capital stock of said Bank, to be paid by them ratably on or before the 1st day of March, 1928, and hereby makes demand upon each and every one of said shareholders for the amount of the par value of

each and every one of his respective shares of the capital stock of said Bank; and hereby directs the said Receiver to take all necessary proceedings, by suit or otherwise, to enforce the said liability of the said shareholders.

The Receiver is authorized to grant an extension of time, without interest, to any shareholder who pays 25 per cent of the said assessment on or before March 1, 1928, and who gives a written obligation, satisfactorily guaranteed, to pay 25 per cent additional on or before April 1, 1928, 25 per cent additional on or before May 1, 1928, and the remaining 25 per cent on or before June 1, 1928.

In witness whereof the said Federal Farm Loan Board has caused this instrument to be executed at the city of Washington in the District of Columbia, this 11th day of January, 1929.

FEDERAL FARM LOAN BOARD,
By CHESTER MORRILL,
Secretary and General Counsel."

The Farm Loan Board here states that it has considered the receiver's report and appraisal, that it is satisfied that it is necessary to enforce the individual liability of the shareholders of the bank, and instructs the receiver to enforce collection of the full amount thereof by suit.

II. Powers Granted to Federal Farm Loan Board.

The first inquiry is as to what power has been granted to the Farm Loan Board to warrant any such action.

The powers granted to the Federal Farm Loan Board are very specific and are granted in detail, for instance:

Section 656, Chapter 7, Title 12, U. S. C. A. provides for the appointment of registrars, deputy registrars, appraisers, examiners, bank appraisers and bank examiners.

Section 658 authorizes the Board to fix the compensation of appraisers and inspectors.

Section 659 authorizes the Board to employ attorneys, experts, assistants, clerks, laborers and other employees to conduct the business of the Board, and to fix their salaries.

Section 662 obligates the Board to require examinations and reports of the condition of all Land Banks and to publish the results thereof, also to make appraisals of farm lands and prepare and publish amortization tables.

Section 663 requires the Board to prescribe a form for the statement of condition of Farm Loan Associations and Land Banks.

Section 664 makes it the duty of the Board to prepare and issue bulletins and circulars, the contents of which are specified.

Section 672 authorizes the Board to establish Federal Land Banks.

Section 673 gives the Board the power to select temporary directors for Land Banks and to fix their compensation.

Section 675 authorizes the Board to make changes or additions to organization certificates of Farm Loan Banks.

Section 678 authorizes the Board to appoint district directors of Federal Land Banks.

Section 679 authorizes the Board to divide each Land Bank district into divisions.

Section 681 provides that the Board shall appoint district directors for specific terms, and select a director at large who may be removed by the Board.

Section 694 authorizes the Board to direct the voting of stock in Federal Land Banks.

Section 695 makes it their duty to open books of subscription for the capital stock of Federal Land Banks.

Section 713 authorizes the Board to approve the payment of salaries to directors and officers of Farm Loan Associations.

Section 714 requires the Federal Farm Loan Board to approve the bond of the Secretary-Treasurer of Farm Loan Banks.

Section 719 gives the Board the power to grant or refuse charters to Farm Loan Associations.

Section 721 gives the Board control over the redemption of stock of Farm Loan Associations.

Section 741 gives the Board the discretion to prohibit loans on farm land mortgages.

Section 743 authorizes the Board to prescribe rules and regulations governing commissions on interest payments.

Section 754 requires the Board to prescribe forms for appraisal reports for Loan Associations and Land Banks.

Section 755 authorizes the Board to direct examinations, appraisals and investigations.

Section 761 (*3*) authorizes the Board to fix charges to be made against borrowers.

Section 771 (*2*) authorizes the Board to make rules and regulations for the retirement of loans.

Section 771 (*4*) (*b*) authorizes the Board to define farm equipment and (*c*) improvement.

Section 771 (*8*) authorizes the Board to make forms for applications for loans.

Section 771 (*9*) authorizes the Board to fix the amount of insurance on all buildings upon which loans are made, and to make regulations for the use of insurance money for reconstruction of destroyed buildings.

Section 771 (*10*) provides that the Board shall prescribe the form and conditions of an agreement to be signed by every borrower.

Section 781 gives the Board supervision over the issuance of farm loan bonds.

Section 781 (*4*) (*b*) gives the Board control as to the length of time a bank may hold real estate.

Section 781 (*9*) gives the Board power to make rules and regulations governing the charging of borrowers for the cost of appraisals and determination of title.

Section 801 permits the Board to authorize Land Banks to make loans through agents provided by it.

Section 808 gives the right to the Board to prohibit loans by agents.

Section 817 requires the Board to direct the distinguishing marks on bonds of Federal Land Banks.

Section 821 requires the Board to prescribe the form of the bonds of Joint Stock Land Banks.

Section 822 requires the Board to approve of the method of voluntary liquidation of Joint Stock Land Banks.

Section 823 requires the Board to approve of the acquisition of the assets of one Joint Stock Land Bank by another.

Section 841 requires the Board to approve the issue of bonds of Federal and Joint Stock Land Banks.

Section 842 requires the Board to make investigation and appraisal of securities, and to grant or reject an application for the issuance of bonds.

Section 853 requires the Board to approve the depositary of securities.

Section 856 gives the Board power to call upon a Land Bank for additional security.

Section 861 authorizes it to fix denominations, amounts and terms of bonds.

Section 862 provides that the Board shall prescribe rules and regulations concerning the payment and retirement of bonds.

Section 864 provides that the Board shall approve the form of Farm Loan bonds, and order their delivery, the reimbursement to the Secretary of the Treasury for the expense of their preparation, and the prescription of rules and regulations for the exchange into registered bonds.

Section 872 requires the Board to assess losses against Land Banks.

Section 881 requires the Board to pass upon an application for the consolidated issue of bonds.

Section 882 requires the Board to make an assessment upon Land Banks in proportion to their capital stock in case of default.

Section 884 requires the Board to pass upon the amount of isue, rate of interest and the participation of banks in consolidated bonds.

Section 893 gives the Board the discretion to fix the place of and to prescribe rules and regulations for the payment of bonds.

Section 914 requires the Board to make rules and regulations as to the investment of reserves.

Section 951 requires the Board to appoint Land Bank examiners.

Section 952 gives the Board the right to direct the examination of National Farm Loan Associations.

Section 953 gives the Board the right to fix the salaries of Land Bank examiners.

Section 961 authorizes the Board to declare an association insolvent, to appoint a receiver and fix his bond, and to direct the sequestration of the assets of the bank, and to approve the sale of its assets on such terms as it may direct.

Section 962 requires the receiver to deposit all moneys subject to the order of the Board.

Section 963 authorizes the Board to declare insolvent and place in the hands of receivers Federal and Joint Stock Land Banks.

Section 964 authorizes the Board to determine the contingent liabilities of Farm Loan Associations.

Section 965 gives the Board the right to withhold or grant consent to voluntary liquidation of Farm Loan Associations, Federal or Joint Stock Land Banks, and to fix rules and regulations for consolidation of Farm Loan Associations.

Section 972 authorizes the Board to declare mortgages ineligible as a basis for an issue of bonds.

Section 991 authorizes the Board to call upon the Secretary of the Treasury to make deposits for temporary use of a bank, and to request the Secretary of the Treasury to purchase bonds.

In addition to this very detailed enumeration of powers is *Section 831,* headed "Powers of Federal Farm Loan Board Generally" which provides as follows:

> *Section 831.* ENUMERATION.—The Federal Farm Loan Board shall have power—
>
> (*a*) ORGANIZING AND CHARTERING BANKS AND LOAN ASSOCIATIONS; AUTHORIZING INCREASE OF STOCK.—To organize and charter Federal land banks, and to charter national farm loan associations and joint stock land banks subject to the provisions of this chapter, and in its discretion to authorize them to increase their capital stock.
>
> (*b*) REVIEWING AND ALTERING INTEREST RATES.—To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this chapter, said rate to be uniform so far as practicable.

(*c*) GRANTING OR REFUSING AUTHORITY TO ISSUE BONDS.—To grant or refuse to Federal land banks, or joint stock land banks, authority to make any specific issue of farm loan bonds.

(*d*) MAKING RULES AND REGULATIONS AS TO CHARGES ON LOANS.—To make rules and regulations respecting the charges made to borrowers on loans under this chapter for expenses in appraisal, determination of title, and recording.

(*e*) REQUIRING REPORTS, ETC.; EXAMINING BANKS AND ASSOCIATIONS.—To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this chapter.

(*f*) PRESCRIBING FORM AND TERMS OF BONDS AND SURETY BONDS.—To prescribe the form and terms of farm loan bonds, and the form, terms, and penal sums, of all surety bonds required under this chapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty.

(*g*) REGULATING PAYMENTS BETWEEN BANKS.—To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement.

(*h*) SUSPENDING OR REMOVAL OF DIRECTORS, REGISTRARS, APPRAISERS, AND EXAMINERS.—To suspend or to remove for cause any district di-

rector or any registrar, appraiser, examiner, or other official appointed by said board under authority of sections 651-664 of this chapter, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank.

(*i*) EXERCISING SUPERVISORY AUTHORITY OVER BANKS.—To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

(*j*) INCIDENTAL POWERS.—To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

Nowhere in this most minute particularization of the Board's powers, which are detailed even to the power to prescribe the form of a surety bond and the application for a loan, is there found any suggestion of a right to enforce the stockholders' personal liability, or to take any action in connection therewith. No mention is anywhere made of any power to estimate the assets and obligations of a bank and to determine whether all or any portion of the individual liability of the shareholders is necessary to pay claims, and to make an assessment therefor.

III. POWERS NOT GRANTED TO THE FEDERAL FARM LOAN BOARD ARE:

1. The power to examine the assets and liabilities of a bank and determine the necessity for enforcement of the stockholder's liability.

2. The power to determine the amount of stockholder's liability to be enforced.

3. The power to levy an assessment upon stockholders.

4. The power to enforce the collection of stockholders' liability by suit at law.

5. The power to authorize the receiver to collect and enforce stockholders' liability.

6. The power to give notice to claimants against the banks to file claims.

7. The power to provide for the time limit within which claims may be filed.

8. The power to provide for the allowance of claims.

9. The power to compromise or adjust claims.

10. The power to pay dividends upon claims.

11. The power to defray the expenses of the receivership.

12. The power to return the remaining proceeds to the stockholders.

These powers all relate to the liquidation and winding up of the bank and are essential to that operation. It is impossible that they should have been overlooked. The most important function that the Board could possess as far as the public and the stockholders are concerned would be this right to levy and collect the amount of the personal liability of the stockholders, and to allow and pay claims. The magnitude of this

power can be visualized when it is realized that the capitalization of the Joint Stock Land Banks is $41,590,960.24 (Report of the Treasury Department upon Joint Stock Land Banks, June 30, 1928, P. 7). This does not include Federal Land Banks, whose aggregate capitalization as of June 30, 1928, was $63,886,000.00 (*Ibid.* 1), nor of the Farm Loan Association, whose capitalization runs into the millions, and the number of whose stockholders is approximately 450,000.

All of the stockholders in these institutions are liable to assessment for the full amount of their stock.

IV. The Court Held That the Powers Not Granted are Implied.

The court held that these powers covering the entire field of liquidation are implied and need not be specified. Would Congress enumerate the Board's powers even to particularizing as to the suspension of an appraiser and the form of a surety bond, and fail to mention these most important of all powers, involving the rights of every creditor and the liability of every stockholder in the Joint Stock Land Banks, the Federal Land Banks and the National Farm Loan Associations, and running into the billions of dollars?

With regard to the right to exercise these great powers the appellate court said:

> "We are of opinion that without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete

means of liquidating the assets of insolvent concerns under the supervision, direction and control of the Board" (R. 32),

and therefore held that the Board had implied power to make the assessment and enforce it.

The entire basis for this implied power is Paragraph (*i*) and Paragraph (*j*) of Section 831, which provide as follows:

> SECTION 831. ENUMERATION.—The Federal Farm Loan Board shall have power
>
> • • • • • • •
>
> (*i*) EXERCISING SUPERVISORY AUTHORITY OVER BANKS.—To exercise general supervisory authority over the Federal Land Banks, the National Farm Loan Associations and the Joint Stock Land Banks herein provided for.
>
> (*j*) INCIDENTAL POWERS.—To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

The right to enforce the stockholders' liability, which is a personal guaranty to creditors, entirely distinct and separate from the assets of the bank and in no wise under the control of the bank, is certainly not included within the words "General Supervisory Authority Over Banks" mentioned in paragraph (*i*) nor is it incidental to fulfilling the duties of the Board as outlined in this chapter, since nowhere in the chapter are any duties imposed upon the Board in connection

with the personal liability of stockholders. The Board has no powers which are not granted to it by statute, and authority for all of its activities must be deducible from some legislative grant.

If Congress had made no effort to enumerate or specify the powers of the Farm Loan Board and had made one general grant of powers covering the entire field, there might have been a basis for respondent's argument, but when the powers of the Board are specifically enumerated and itemized in the greatest detail, even in relation to the most unimportant duties of the Board, there is no basis for it. By the grant of incidental powers Congress meant to bestow such powers as are necessarily incident to the powers specifically granted and enumerated. This great power to levy and assess for double liability of stockholders cannot be logically claimed to be included under such a grant, for the Board has been given no duties with regard to the assessment, determination or collection of the personal liability of stockholders. It is impossible therefore for this power to be incidental to the performance of the duties of the board.

V. If There is No Deficit, the Shareholders Are Not Liable.

If the prices of farm lands continue to rise, it is possible that the assets of the bank may be sold for sufficient to pay the obligations of the bank in full. In such a case there would be no obligation upon the shareholder to pay. If the prices of farm lands should rise sufficiently to pay three fourths of the claims

against the bank, the shareholder would be liable but for a fraction of his statutory liability.

There is no provision in the law authorizing the Board to estimate the amount of claims against the bank, or to value its assets and determine a deficit. There is no provision in the law authorizing the repayment to shareholders of any overpayment by them of any portion of their liability which may not be necessary to pay claims.

Under this state of the law there is no warrant or authority on the part of the Farm Loan Board to demand full payment from every shareholder of the full amount of his stock before there has been any liquidation or determination of the amount of the claims, or the amount realizable from the assets. If less than the full amount of the stockholders' liability is necessary to pay the claims in full no action can be maintained against the shareholder to recover this liability in an action at law, for only a court of equity can apportion between the shareholders ratably the amount of their liability. *Kennedy vs. Gibson*, 8 Wallace 498.

The obligation of the shareholder is to pay his ratable proportion of such claims as cannot be paid out of the assets of the bank, and he is not obligated to pay the full amount of his stock upon the estimate of the Farm Loan Board before any claims have been allowed, and then trust to good fortune to receive a rebate of whatever may not be necessary.

VI. Powers of the Receiver.

The second step in the enforcement of personal liability of the stockholders in this case was the demand

made by the receiver upon the shareholders for the par value of their respective shares of the capital stock. After demand was made, the receiver instituted this action to enforce collection of the amount of petitioner's stock. The second question therefore arises as to the power of the receiver to enforce the shareholder's personal liability by suit.

The appointment of a receiver is provided by *Section* 963 *of Chapter* 7, *Title* 12, *U. S. C. A.*, which provides as follows:

> "Upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations."

"This Section" referred to, is *Section* 961 providing for the appointment of receivers for Farm Loan Associations, and provides as follows:

> "Upon receiving satisfactory evidence that any National Farm Loan Association has failed to meet its outstanding obligations of any description, the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver, and require of him such bond and security as it deems proper. * * * Such receiver under the direction of the Federal Farm Loan Board shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it, and with the approval of the Federal Farm Loan Board or upon the order of a

court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like approval or order may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct."

The powers and duties of the receiver arise from and are defined by this section. He can have no other, further or different powers. He is simply an agent to perform the outlined duties. He has none of the general powers of a receiver of a court of equity.

McDonald vs. State of Nebraska, 101 Fed. 171, 173.

Wallace vs. Hood, 89 Fed. 11, 22.

King vs. Pomeroy, 121 Fed. 287, 290.

The receiver is simply a collector or conservator of the assets of the bank. He takes possession of the books, records and assets of every description of the association, collects all debts, dues and claims of the association, and with the approval of the Farm Loan Board or a court of record he sells all of the assets of the association (*Section* 961) and pays over all money collected to the treasurer of the United States subject to the order of the Federal Farm Loan Board (*Section* 962). His work is then performed, and he makes report to the Board of his acts (*Section* 962). There is no suggestion anywhere in the law that the receiver has anything whatever to do with the shareholders or their personal liability, or with the creditors of the bank and their claims against it.

VII. Congress Intentionally Refrained from Giving the Receiver Power to Enforce Stockholders' Personal Liability.

At the time of the enactment of the Federal Farm Loan Act, the National Banking Act had been in force for many years. The provisions thereof with regard to the appointment and powers of a receiver are found in *Section* 192, *Chapter* 2, *Title* 12, *U. S. C. A.*:

> "On becoming satisfied as specified in Sections 131 and 132 that any association has refused to pay its circulating notes as herein mentioned, and is in default, the comptroller of the currency may forthwith appoint a receiver and require of him such bond and security as he deems proper. Such receiver under the direction of the comptroller shall take possession of the books, records and assets of every description of such association, and collect all debts, dues and claims belonging to it, and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like order may sell all the real and personal property of such association on such terms as the court shall direct, *and may if necessary to pay the debts of such association enforce the individual liability of the stockholders.* Such receiver shall pay over all moneys so paid to the treasurer of the United States subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings."

An examination and comparison of this section with *section* 961 above quoted shows that the Farm Loan

Act follows the national banking act word for word with the single exception that there is omitted from *Section* 961 the words contained in *section* 192 printed in italics, namely,

> "and may if necessary to pay the debts of such association, enforce the individual liability of the stockholders."

The wording immediately prior to and after this quotation is identical with that of the banking act.

A comparison of the two acts can be easily made, thus:

Farm Loan Act, Section 961, *U. S. C. A.*

"Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, that no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal Land Bank district, unless such association shall have been in default for a period

Section 192, *U. S. C. A.*

"On becomong satisfied, as specified in sections 131 and 132 that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper.

of two years. Such receiver, under the direction of the Federal Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board, or said court shall direct."

Such receiver, under the direction of hte Comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and upon the order of a court of record of competent jurisdiction may sell or compound all bad or doubtful debts, and, on a like order may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.*

Section 962, *U. S. C. A.*

"Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said Board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received."

Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the Comptroller, and also make report to the Comptroller of all his acts and proceedings."

This shows that *Section* 192 of the Banking Act was followed word for word until it came to the provision authorizing the receiver to enforce the individual liability of the stockholders. The section was there ended, that provision omitted and a new *Section* (962) continued the wording of the Banking Act. This action conclusively demonstrates an intentional omission of the grant of power to the receiver to enforce the individual liability of the stockholders.

It is thus seen that all powers with regard to the determination and enforcibility of the personal liability of shareholders, which are contained in the Banking Act, are omitted from the provisions relating to the Federal Loan Board as well as from the provisions relating to their receiver.

VIII. The National Banking Act's Method of Enforcing Personal Liability.

The Banking Act has a complete system for the enforcement of the individual liability of stockholders. *Section* 191, *Chapter* 2, *Title* 12, *U. S. C. A.* authorizes the Comptroller to "appoint a receiver who shall proceed to close up such association and enforce the personal liability of the stockholders." *Section* 192 specifically gives the receiver the right to enforce this liabil ity. *Section* 193 requires the comptroller to give notice by advertising in newspapers for three consecutive months calling on all persons who have claims to present and prove them. *Section* 194 provides for the allowance of claims, the payment of dividends, and the return of the remainder of the proceeds to the shareholders. *Section* 196 provides for the payment of the expenses of the receivership.

In the Farm Loan Act all of these provisions are missing. No provision is made for giving notice to creditors of the bank, for a limitation of the time of filing claims, for the allowance of claims, or the payment thereof, for the return of any surplus to the

shareholders, or for the payment of the expense of the receivership. It is therefore perfectly apparent from the statutes that the receiver of the Farm Loan Association was not intended to have any powers or duties whatever with regard to the enforcement of the individual liability of the stockholders, the proof of claims against the association, their payment and the final distribution.

IX. The Reasons for Withholding From the Receiver the Power to Enforce Personal Liability.

What then was the intention of Congress? Who was to enforce the stockholders' liability, have hearings upon the claims, provide for their allowance and payment, and the ratable division of liability among the stockholders? In such a case where no express provision is made by statute, a court of equity is the tribunal which through the medium of a creditor's action works out all of these subjects. This jurisdiction is perfectly familiar, and has been in use in identical situations for many years. Congress may well have thought that in a matter of this kind affecting a large number of individuals residing in the neighborhood or territory served by the association, that it would be better to have the rights of stockholders and creditors protected by court action at the domicile of the association rather than have it left to the arbitrary disposition of one individual in Washington.

A very potent reason for leaving the liquidation of the bank to the local court is the following: The statutory liability of the stockholders is a guaranty to the

creditors, separate and distinct from the assets of the bank. It is a personal obligation to pay any deficiency which may result in the payment of claims after the assets of the bank have been exhausted. The amount of this guaranty is determined by this deficit. Every stockholder has a right to have a voice in the determination of his liability, to have his day in court before judgment is entered against him upon this contract.

Under the plan worked out by the Court of Appeals a stockholder has no voice in the determination of this liability, no chance to be heard in the ascertainment of the amount of, nor to question the items of expense or loss which are charged against him. An assessment of the full amount of the liability is made by the Farm Loan Board at the outset before any claims are allowed. Suit is immediately brought to enforce payment of this amount with the claim that the amount cannot be controverted, that the Board has the exclusive right to determine the amount of the assessment. The result is that his money is taken from him on a contract of indemnity before any liability on that contract has been established. He has no day in court, no opportunity to litigate the amount of his liability, no right to question the necessity of any assessment at all. This is all accomplished by the Board and the Receiver—neither of whom is liable to suit in the place of the stockholder's residence. This is certainly not due process of law, nor in accord with the basic principles of the common law which give every man a right to litigate the amount of his liability upon any contract or undertaking he may have made.

X. Where no Authority is Given by Statute to Enforce the Liability of Stockholders, it Shall be Enforced Through a Court of Equity.

An entirely analogous situation arose with regard to the National Banking Act prior to the amendment of 1876. The same provisions which are now in that Act were then applicable only to instances of involuntary closing of the bank. The statutes made no reference whatever to the method of working out the same problems in cases of voluntary liquidation of the bank. The question arose as to who was to enforce the stockholders' liability in the case of a voluntary liquidation. The court said:

> "It thus appears that in the case of an involtary liquidation under this section, the business of liquidation, as defined and required by the law, involved the appointment of a receiver, who should, in addition to the collection of the ordinary assets of the bank, also enforce against the stockholders their individual liability, so far as necessary to create a fund sufficient to pay all the debts of the association. It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of voluntary liquidation, left the creditors of such association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. Section 5151 imposes upon the shareholders of every national banking association an individual responsibility for its contracts, debts, and engagements, and the terms in which the obligation is created

are unconditional and unqualified, except that the liability shall be equal and ratable as among the shareholders.

"As all the shareholders are bound in that way to all the creditors, any proceeding to enforce this liability must be such as from its nature would enable the court to ascertain for what the stockholders ought to be made liable, to whom, and in what proportion as respects each other. This can only be done by the methods and machinery of a court of equity."

Richmond vs. Irons, 121 U. S. 27, 48.

Congress later recognized that method of winding up a bank as the proper one by the passage of the *Act of June* 30, 1876, *Chapter* 156, *Section* 2, reading as follows:

"That when any national banking association shall have gone into liquidation, under the provisions of section five thousand two hundred and twenty of said statutes, the individual liability of the shareholders, provided for by section fifty one hundred and fifty one of said statutes, may be enforced by any creditors of such association by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or establish."

This Act is now *Section* 65, *Chap.* 2, *Title* 12, *U. S. C. A.*, and still provides for the enforcement of the shareholders's liability by a creditor's action.

There was therefore in existence at the time of the passage of the Farm Loan Act a practice and method of winding up banks without the interposition of the statutory receiver, and it must be presumed that Congress intended that that well known method should be aplied to the liquidation of these farm loan banks.

To the same effect holding that where no specific method of liquidation is prescribed by statute, it shall be done through a creditor's action is *Williamson vs. American Bank,* 115 Fed. 793.

To the same effect are also the decisions of most of the states including Wisconsin.

In the early case of *Coleman vs. White,* 14 Wis. 700, which was an attempt to enforce the stockholders individual liability as a shareholder of a state bank by an action at law, the court said in denying the right to sue at law:

> "We are persuaded that the remedy should be by suit in equity, in which all the creditors should join, or one or more of them should sue for the benefit of all, and that the action should be against the bank and all the stockholders, unless it be impossible or impracticable to bring them all before the court, or some other sufficient cause for the omission be shown. This conclusion, we think, follows necessarily from the nature of the obligation imposed, it being a liability on the part of all the stockholders, in proportion to the amounts of their respective shares, to all the creditors according to the sums severally due them. It is an indebtedness which a court of law has no power to regulate and adjust, and to which the jurisdiction and powers

of equity are peculiarly and exclusively adapted. The creditors should all join, because they have a common interest in the funds to be realized; or if the action be commenced by one or more of them, the complaint should be so framed that the others may come in and prove their claims before the court or a referee and share in the distribution of the moneys received. All the stockholders should be made defendants, because they too have a common interest, and without their presence it is impossible to adjust their rights and liabilities, and protect them from unequal and oppressive burdens * * * (page 702)."

The court further says, quoting from a Massachusetts case, at page 704:

"It may happen, and probably has happened in this instance, that a bank owes more than the amount of its whole capital. In such case there must either be a *pro rata* division among the creditors, of what may be recovered, which would be impracticable in suits at law, or those who sue first must recover the whole of their debts, leaving others totally remediless, which would be palpably unjust. The evils and inconveniences of attempting to enforce this section by suits at common law would be incalculable; and such remedy would be inadequate, vexatious and mischievous. The only proper means of giving effect to this provision is by a process in equity; and this, of all cases which can arise, seems to call most loudly for a chancery jurisdiction. To a bill in equity all persons, however numerous, might be made parties; and all the relative and conflicting claims

of the many creditors and stockholders settled, and their proportionate rights to recover, and liabilities to contribute adjusted in a single suit. We are all, therefore, of opinion that this case comes within the equity jurisdiction of the court, and that an action at law will not lie."

This decision of the Wisconsin Court has been uniformly applied and approved since in the following cases:

Gianella *vs.* Bigelow, 96 Wis. 185, 71 N. W. 111.
Booth *vs.* Dear, 96 Wis. 516, 71 N. W. 816.
Williams *vs.* Meloy, 97 Wis. 561, 73 N. W. 40.
Rehbein *vs.* Rahr, 109 Wis. 136, 85 N. W. 315.

To the same effect are:

Irons *vs.* Manufacturers Natl. Bank, 17 Fed. 308.
Miller *vs.* Smith, 26 R. I. 146, 58 Atl. 634, 66 L. R. A. 473 (R. I.).
Terry *vs.* Little, 101 U. S. 216.
Arenz *vs.* Weir, 89 Ill. 25.
Ryerson & Son *vs.* Peden, 303 Ill. 171, 135 N. E. 423.
Pfohl *vs.* Simpson, 74 N. Y. 137.
7 Fletcher on Corporations, Sections 4216, 4218.
Way *vs.* Barney, 116 Minn. 285, 133 N. W. 801.
Mills *vs.* Scott, 99 U. S. 25.
Terry *vs.* Tubman, 92 U. S. 156.
Pollard *vs.* Bailey, 20 Wallace 520.

The foregoing cases hold that a court of equity by means of a creditor's action is the only method of

enforcing stockholder's liability where no statutory method is provided.

The Farm Loan Act also recognizes court action with regard to this liquidation, for *Section* 961 provides that the receiver—

> "*Upon the order of a court of record of competent jurisdiction* may sell or compound all bad or doubtful debts, and on a like approval or order may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board *or said court* shall direct."

This provision of the law placing the liquidation of the bank in the hands of the court gives every stockholder a voice in the determination of the amount of the assessment against him. He is entitled to this as a constitutional right, and cannot be, as respondent contended in the lower court, conclusively bound by the determination of the Federal Farm Loan Board to pay the full amount of his stock without having had a chance to raise a question as to the amount of the assessment. He is entitled to his day in court.

XI. The Stockholder's Liability to the Creditors is not an Asset of the Bank.

It is a liability created by statute running *directly to the creditors* as an extra guaranty to insure the payment of their claims. The bank cannot enforce it, and has nothing whatever to do with it. It is not listed among the bank's assets. The bank cannot delegate

an agent or a receiver to collect it. A receiver of the bank cannot even compromise such a claim. It is not a debt to the bank, but to the creditors. The law is thus stated by *Fletcher:*

> "In the absence of provisions to the contrary, the individual liability for corporate debts, imposed upon the stockholders of a corporation by a charter, statutory or constitutional provision, is solely for the benefit of and directly to the creditors, and can only be enforced by them or by someone representing them. The liability is not imposed for the benefit of the corporation, and is not in any sense a part of its assets like unpaid subscriptions for stock, and unless so provided by statute it cannot be enforced by the corporation itself by assessment or otherwise, even for the purpose of raising a fund for the payment of debts."

7 Fletcher Encyclopedia on Corporations, Section 4210.

4 Thompson on Corporations, Section 4801.

Ryerson & Son *vs.* Peden, 303 Ill. 171, 135 N. E. 423.

Arenz *vs.* Weir, 89 Ill. 25, 28.

Courtney *vs.* Georger, 228 Fed. 859.

Re Jassoy Company, 178 Fed. 515.

1 Loveland on Bankruptcy, Section 393.

Remington on Bankruptcy, 2nd Edition, Section 978.

Hilliard *vs.* Lyman, 138 Fed. 469.

In re Crystal Spring Bottling Co., 96 Fed. 945.

In re Beachy & Co., 170 Fed. 825.

Seegmiller *vs.* Day, 249 Fed. 177.

As this personal liability of the stockholders is not assets or property in the hands of the corporation, it does not pass to the receiver, for he takes only the assets of the bank and is merely its assignee. He has no higher or superior rights to the bank. It therefore follows that in the absence of express statutory authority the receiver has no power to enforce the individual liability of the stockholders.

XII. The Receiver Cannot Enforce the Individual Liability of the Stockholder.

As the liability of the shareholder is to the creditors and not to the bank, and does not constitute assets of the bank, it does not pass to the receiver. He therefore has no power whatever to enforce it, unless that power is specifically granted by statute.

> "Since the liability is not an asset of the corporation unless made so by the statute, it does not pass under an assignment by the corporation for the benefit of creditors so as to entitle the assignee to enforce it, nor in the absence of provisions to such effect can the liability be enforced by an assignee in insolvency or a trustee in bankruptcy of the corporation, by an agent appointed by the stockholders to wind up the affairs of the corporation, or by a receiver appointed by a court of equity, whether appointed at the suit of a stockholder or at the suit of a creditor, and whether he is a general receiver invested with 'all the estate, property and equitable interests' of the corporation, or a special receiver appointed for the purpose. 'Neither a receiver nor an assignee in bank-

ruptcy, nor an assignee under a voluntary general assignment for the benefit of creditors, each of whom represents creditors as well as the insolvent, acquires any right to enforce a collateral obligation given to a creditor or to a body of creditors by a third person for the payment of the debts of the insolvent.' "

7 Fletcher on Corporations, Section 4214, and cases cited.

1 Cook on Corporations, Section 218.

Jacobson *vs.* Allen, 12 Fed. 454.

Brown *vs.* Trail, 89 Fed. 641, approving Jacobson *vs.* Allen.

In re Associated Oil Co., 289 Fed. 693.

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In Conclusion.

As a result of the study of the National Banking Act and the Farm Loan Act, we find that the Farm Loan Board has been given specific, definite, limited and detailed powers, among which do not appear any powers with regard to the proof, allowance and payment of claims, or the determination and enforcement of stockholders' liabilities; that the powers of the statutory receiver appointed by the Farm Loan Board are defined by the statute in words identical with those of the National Banking Act granting powers to its receiver, with the exception that the power to enforce the liability of stockholders and liquidate the claims of creditors is specifically omitted.

We find that the National Banking Act contains two methods of enforcement of stockholders' liabilities, one in case of involuntary proceedings by the receiver who is specifically authorized to enforce by suit the personal liability of the stockholders (*Section 192, Chapter 2, Title 12, U. S. C. A.*); the second, in case of voluntary proceedings, by a creditor's action in equity in the United States Court for the district in which the bank is located (*Section 65, Chapter 2, Title 12, U. S. C. A.*).

Since Congress in the Farm Loan Act provided for the stockholders' liability and refused to place the enforcement of it in the hands of the Farm Loan Board or its receiver, it must have intended that it should be enforced by the second method above mentioned, and such a suit has in fact been instituted and is now pending by one creditor on behalf of all against all the stockholders of the bank in the Eastern District for the State of Wisconsin.

It is therefore respectfully submitted that the trial court was correct in holding that the receiver appointed by the Farm Loan Board could not sue to recover the personal liability of the stockholders, and that the Circuit Court of Appeals erred in reversing that decision and holding that the receiver had implied powers to make such enforcement, and that the decision of the Circuit Court of Appeals should be reversed.

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Counsel for Petitioner.

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CHARLES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. [redacted] 39

J. R. WHEELER, Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

PETITIONER'S BRIEF.

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STATEMENT

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 711

J. R. WHEELER, Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

STATEMENT

MAY IT PLEASE THE COURT:

This cause is here on certiorari to review a judgment of the Circuit Court of Appeals for the Seventh Judicial Circuit. (Rec., 22.) The judgment to be reviewed reversed a judgment of the District Court of the United

States, for the Eastern District of Wisconsin, that dismissed the complaint of Greene, Receiver of Bankers Joint Stock Land Bank of Milwaukee. The receiver sought to enforce petitioner's alleged liability as a shareholder of the said bank to creditors.

The District Court rendered no opinion, but dismissed Greene's complaint (after demurrer) upon the ground that it failed to state sufficient facts to constitute a cause of action. That court held that the Federal Farm Loan Board could not empower its receiver to enforce Wheeler's liability (as a shareholder of Bankers Joint Stock Land Bank of Milwaukee) to *creditors*.

The Circuit Court of Appeals held that the said Board could so empower its receiver. For the opinion of that court see *Greene* v. *Wheeler*, 29 Fed. (2d) 468, pp. 14-22 of the record.

This conflict between the two lower courts gives rise to the real question to be decided by this Court, which is—

> Shall the Federal Farm Loan Act, which in effect provides, not only that the liability of shareholders of Joint-Stock Land Banks to *creditors* shall be enforced by *creditors*, but that it shall *not* be enforced by *receivers* appointed by the Federal Farm Loan Board, *stand as passed by the Congress*, or shall the *amendment* of the said act by the Circuit Court of Appeals be accepted?

JURISDICTION OF THIS COURT.

Section 240 (a) of the Judicial Code, as amended (28 U. S. C. A. § 347)[1], amply sustains the jurisdiction of this court. That the District Court had jurisdiction of the controversy, please see page 7, *infra*. The date of the judgment sought to be reviewed is December 13, 1928. (Rec., 22.) Wheeler's petition for certiorari was filed herein on February 21, 1929. (Rec., 23.) On April 15, 1929, the petition was allowed, and at the same time the cause was advanced for argument. (Rec., 22-3.)

Unquestionably, the petition was providently allowed. As shown on page 5 of the aforesaid petition, there are a great many Federal Joint Stock Land Banks, Federal Land Banks, and Farm Loan Associations with liabilities in excess of $1,000,000,000. A number of them are in the hands of receivers appointed by the Federal Farm Loan Board. It is of the utmost importance that this court determine whether shareholders' liability to creditors shall be enforced by creditors, as provided by the Congress, or by receivers appointed by the Board, as determined by the Circuit Court of Appeals.

---

1. "(a) in any case * * * in a Circuit Court of Appeals * * * it shall be competent for the Supreme Court of the United States, upon petition of any parties thereto * * * to require by certiorari * * * that the cause be certified to the Supreme Court for determination by it with the same power and authority and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

SOME ESSENTIAL FACTS.

The Federal Farm Loan Act provides that shareholders of every joint-stock land bank shall be held

> "individually responsible, equally and ratably, and not one for another, for all contracts, debts and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." (12 U. S. C. A. § 812.)

Of course this liability runs to *creditors,* and not to the *bank.* And of course only the persons to whom this liability runs, may enforce it, in the absence of an express provision to the contrary.

The act also provides that the Federal Farm Loan Board may declare joint-stock land banks insolvent and place them in the hands of a receiver "upon default of any obligation," *and that "proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."* (12 U. S. C. A. § 963.)

It is admitted that petitioner (a citizen of the Eastern District of Wisconsin) owns 50 shares, of the par value of $100 a share, of the capital stock of Bankers Joint Stock Land Bank of Milwaukee; that the said bank was duly organized under the Federal Farm Loan Act, and that respondent was appointed receiver of said bank by the Federal Farm Loan Board. (Rec., 1.)

Section 961 of 12 U. S. C. A. provides for the appointment of receivers of national farm loan associations and defines their powers and duties. So far as it is rel-

evant to "proceedings * * * had" by receivers of joint-stock land banks said section is as follows:

> "Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of *such association* [*joint-stock land bank*], collect all debts, dues and claims belonging to *it*, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like approval or order, may sell all the real and personal property of *such association* [*joint-stock land bank*], on such terms as the Federal Farm Loan Board or said court shall direct."

(Shareholders' liability to creditors is not a *corporate* asset. The Court will observe that the foregoing section *prohibits* the power claimed by the respondent in the case at bar, *because it does not grant it.* There is no other section that conflicts with the foregoing section.)

It is also admitted that the Federal Farm Loan Board levied an assessment upon the shareholders of Bankers Joint Stock Land Bank of Milwaukee in the sum of $1,200,000 (the amount of the par value of all the shares of capital stock of said bank issued and outstanding), to be paid equally and ratably by the shareholders; that the Federal Farm Loan Board directed the respondent to sue all shareholders who should refuse to pay; that demand was made on petitioner for $5,000, which he refused to pay, and that respondent brought this action at law against petitioner to collect said amount. (Rec., 2.)

The facts above stated were all properly before the District Court (complaint, Rec. 1; demurrer, Rec. 4; demurrer sustained, Rec. 6; plaintiff's refusal to plead further, Rec. 6-7; judgment for defendant, Rec. 7), and

all questions were properly saved for review by the receiver.

Wheeler's demurrer to the receiver's complaint raised the following question in the District Court:

> Did the Federal Farm Loan Board's direction to its receiver to collect from petitioner his proportion of the assessment levied by said Board on shareholders of Bankers Joint Stock Land Bank of Milwaukee, *empower* the aforesaid receiver to collect said amount, or was the direction null and void?

We should perhaps state that the Federal Farm Loan Act (12 U. S. C. A. § 831) after providing that the Federal Farm Loan Board shall have power

> (a) to organize and charter Federal land banks, etc.,
>
> (b) to review and alter interest rates,
>
> (c) to grant or refuse authority to issue bonds,
>
> (d) to make rules and regulations as to charges on loans,
>
> (e) to require reports, etc., and to examine banks, etc.,
>
> (f) to prescribe form and terms of bonds and surety bonds,
>
> (g) to regulate payments between banks,
>
> (h) to suspend or remove directors, registrars, appraisers, and examiners,
>
> (i) to exercise general supervisory over banks,

also provides that the said Board shall have power

> (j) to exercise such *incidental* powers as shall be necessary or requisite to *fulfill its duties and carry out the purposes of this chapter.*"

(See Appendix, pp. 103-4, *infra*, for this section in full.)

JURISDICTION OF DISTRICT COURT.

The District Court had jurisdiction to pass upon the receiver's claim under Section 24 (1) of the Judicial Code as amended, since the matter in controversy exceeded, exclusive of interest and costs, the sum of $3,000, and arose under the laws of the United States. (28 U. S. C. A., Sec. 41.) Moreover, the receiver was an officer of the United States.

Gibson v. *Peters*, 140 U. S. 342, 14 S. Ct. 134, 37 L. ed. 1104.

Speckar v. *German Nat. Bank*, 85 Fed. 12.

Schofield v. *Palmer*, 134 Fed. 753.

Thompson v. *Pool*, 70 Fed. 725.

And while this officer was not as a matter of fact "authorized by law to sue," since the Federal Farm Loan Board's attempt to so authorize him was null and void, he *claimed* that he was authorized to sue. The District Court, therefore, also had jurisdiction to pass upon the aforesaid claim. (Section 24 (1) of the Judicial Code as amended.)

ERROR INTENDED TO BE URGED.

The only error we intend to urge here may be stated as follows:

> The Circuit Court of Appeals erred in holding that the Federal Farm Loan Board could empower its receiver to enforce shareholders' liability to creditors.

The foregoing proposition not only (a) postulates that the receiver is without inherent power to maintain an action to enforce shareholders' liability to creditors, and (b) challenges the authority of the Board to empower him to do so, but (c) also denies that the Board has the power to determine the amount of shareholders' liability to creditors.

We submit that the specific proposition (b)—*the Federal Farm Loan Board is without authority to empower its receiver to enforce shareholders' liability to creditors*—is, alone, *decisive* of this case, for the following reasons:

> The receiver seeks to enforce Wheeler's alleged liability to creditors, and tenders the order of the Federal Farm Loan Board fixing the amount and directing him to enforce the liability as proof of his alleged right to maintain his action. Wheeler demurs on the ground that the receiver's complaint does not state sufficient facts to constitute a cause of action. (R. 5.) The essence of this demurrer is, that "in no event and under no circumstances, and in no capacity, does the plaintiff own or represent the cause of action sought to be enforced." *McKenney* v. *Monahan,* 119 Wis. 651, 97 N. W. 489, 491. (See also 31 Cyc. 296, 289-90, and cases cited.)
>
> Manifestly, the receiver's alleged ownership or representation of the cause of action sought to be enforced must rest upon that part of the order that

directs the receiver to sue, and not upon the part that undertakes to fix the amount of the statutory liability. A mere order fixing the aforesaid amount, without more, could in no way create a legal relation between the receiver and the defendant, whether the order was valid or invalid. Something more would be necessary to vest in the receiver the ownership of the alleged cause of action sought to be enforced, or to authorize him to represent it, *viz., an order directing him to sue.*

This is true because (a) Greene is *not* a creditor, and (b) under § 961 of 12 U. S. C. A., Greene, as *receiver,* is a mere *custodian* of the *corporation's* property and assets. He has no *title* even to them. Clearly, an order of the Board directing him to enforce shareholders' liability is essential.

Kennedy v. *Gibson,* 8 Wall. 498.

1 Tardy's Smith on Receivers, § 338, p. 845.

Rhodes v. *Hilligass* (Ind.) 45 N. E. 666.

Lafayette Bank v. *Buckingham,* 12 Ohio St. 419, 425.

Sterrett v. *Second Nat. Bank,* 246 Fed. 753, 248 U. S. 73.

Great Western Mining and Manufacturing Co. v. *Harris,* 198 U. S. 561.

And the order in question must be *valid,* since to create a legal relation between Greene, as *receiver,* and petitioner it is necessary that the Board *have the power to authorize its receiver to enforce shareholders' liability to creditors.*

If the Board has the power to enforce through its receiver shareholders' liability to creditors, then it might have the incidental power to determine the amount of that liability. But if, on the other hand, the Board is without power to enforce shareholders' liability to creditors, we need not concern ourselves with whether it has power to assess shareholders.

The cause will have been decided, and the question last mentioned will have become wholly academic.

Because the National Bank Act expressly provided that a receiver of an insolvent national bank appointed by the Comptroller of the Currency might under the latter's direction,

> "if necessary to pay the debts of such association, enforce the individual liability" of stockholders to creditors

this Court held that the order of the Comptroller, declaring to what extent the individual liability of the stockholders should be enforced, was conclusive, and that it might be made before the amount of the debts was known, even though the power to assess stockholders had not been expressly granted.

Kennedy v. *Gibson,* 8 Wall. 498.

Casey v. *Galli,* 94 U. S. 673.

In short, the Federal Farm Loan Board either has or has not the power to authorize its receiver to enforce shareholders' liability to creditors. And it is too clear for argument that if the Board is without power in the premises, this action must be dismissed.

But the Board's demonstrable lack of power to determine the amount of shareholders' liability to creditors is also important. Since the Federal Farm Loan Act does *not* provide that a receiver appointed by the Federal Farm Loan Board may, under the latter's direction,

> "if necessary to pay the debts of such association, enforce the individual liability of shareholders to creditors,"

it necessarily follows that the power of the Board to assess shareholders does not exist as an *incidental* power. It is also a fact that the Federal Farm Loan Act does not *expressly* empower the Federal Farm Loan Board to assess shareholders. *Necessarily the power in question does not exist.*

And the failure of the Congress to grant the power, either directly or indirectly, conclusively demonstrates that the Congress intended that shareholders should have a day in court and be heard upon the question of the amount of their liability, if any, to creditors. *This accounts for the radical differences between the National Bank Act and the Federal Farm Loan Act.* These differences are pointed out in the course of our argument. (Pages 86-91, *infra.*)

We might well contend that the receiver's complaint does not "sufficiently set forth the facts necessary to warrant the appointment of a receiver" or facts showing the necessity of enforcing the liability of shareholders to creditors, and cite

Kennedy v. *Gibson,* 8 Wall. 498

Casey v. *Galli,* 94 U. S. 673

in support of our argument. In fact, the complaint herein is extremely informal. It is 'simplified' pleading *à outrance.* However, we have not come before this Court to have settled a mere matter of code pleading, particularly when the defects of respondent's complaint, if any, are amendable, and the receiver was appointed back in 1927. (Rec., 1.) Whether the Federal Farm Loan Board can empower its receivers to enforce shareholders' liability to creditors is the substantial question in this case. Unquestionably that is the question that this Court intended to decide when it granted the writ in the case at bar, because the public interest demands that it be authoritatively settled.

HISTORY OF THE FEDERAL FARM LOAN ACT.

There are other facts that are essential to a complete understanding of this case. They are (a) the pre-law history of the Federal Farm Loan Act, (b) sections of acts *in pari materia,* and (c) proposed amendments to the Federal Farm Loan Act. We think that they should be set forth here rather than during the argument. These facts demonstrate that the Congress *purposely* withheld from the Federal Farm Loan Board the powers which the Circuit Court of Appeals granted to it by means of what Austin called "spurious interpretation," which "is not *interpretation,* but a process of legislative amendment, or a process of legislative correction" that "lays all statute law at the arbitrary disposition of the tribunals." (2 Austin's Jurisprudence, 4th ed., Lecture XXXVII, p. 650.)

Pursuant to an act approved on March 4, 1913, the President appointed the United States Commission "to investigate and study in European countries co-operative land-mortgage banks, co-operative rural-credit unions, and similar organizations and institutions devoting their attention to the promotion of agriculture and the betterment of rural conditions."

On January 29, 1914, this Commission, composed of the gentlemen mentioned below,[2] made a report, which was accompanied by a proposed bill and the Commis-

2. Duncan U. Fletcher, Chairman
Thomas P. Gore
Ralph W. Moss, Vice Chairman
John Lee Coulter, Secretary
Kenyon L. Butterfield
Clarence J. Owens

sion's interpretation of it. (Cong. Rec. Vol. 51, Part 3, p. 2486 *et seq.*) As will hereafter appear, the following excerpt from the statement made by the Commission is significant:

> "As against the central bank idea, the bill suggested by the commission affords competitive banking. It is founded on American models. *It is based, to a large extent, on the plan of our national banking system, changed as the commission deemed wise to overcome the difficulties which had theretofore been shown to attach to the national banking plan.*" (Ibid. p. 2490, 2nd column, 5th par.)

Section 31 of the suggested legislation provided for the so-called "double liability" of shareholders to creditors. (Ibid. p. 2498.) Instead of a board, the suggested legislation provided for the appointment of a commissioner of farm-land banks. It is significant that it was proposed that this commissioner might forfeit charters and liquidate national farm-land banks in accordance with such rules as he should devise, subject, of course, to the provisions of the suggested legislation.[3]

Subsequently a Joint Committee of the two Houses of Congress was appointed pursuant to an Act approved on March 4, 1915. This committee was known as the Joint Committee on Rural Credits. The Honorable Carter

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3. "Sec. 10. That the commissioner of farm-land banks is authorized and empowered, upon proper application to issue charters or certificates of incorporation for the establishment of national farm-land banks as herein provided for, and to exercise supervision and control over, and make examinations of, all of the national farm-land banks established under this Act, under such general rules as may be provided; and to withdraw or forfeit such charters or liquidate such banks whenever necessary, in accordance with rules to be provided, subject in all respects to the requirements and provisions herein contained." (Ibid. p. 2496.)

Glass, House Chairman of the Committee on Banking and Currency, was its chairman. The names of the other members of the committee are set forth in the margin.[4]

Some sixty or more bills dealing with the matter of rural credits having been introduced since August, 1913, the Joint Committee above mentioned "was charged with the duty of considering all proposals theretofore made, and the whole subject with instructions to report a bill by January 1, 1916." (Cong. Rec. Vol. 53, part 4, p. 3543.)

On January 4, 1916, the chairman of the Subcommittee on Land Mortgage Loans made a report to Honorable Carter Glass recommending the passage of the bill that accompanied the report. The bill is described somewhat in detail, but is not printed in the Congressional Record. (Cong. Rec. Vol. 53, part 1, p. 452, *et seq.*) It formed the basis of the bill that subsequently was enacted. It provides for a board instead of a commissioner; for joint-stock land banks, double liability of stockholders, the appointment of receivers, etc. (Ibid., p. 455.) That committee reported that it had had the constant advice and co-operation of Senator Fletcher.

The Joint Committee asked for, and was granted, some four months' time to file an additional report. (Ibid. pp. 455-6.) Subsequently a bill was introduced (Senate Bill 2986); and after protracted debates, amend-

4. Robert L. Owen
Henry F. Hollis
Thomas P. Gore
Hoke Smith
Knute Nelson
James H. Brady
Michael F. Phelan
Asbury F. Lever
Ralph W. Moss
Everis A. Hayes
Willis C. Hawley

ments, conference reports, etc., it was finally enacted and was approved by the President on July 17, 1916. (See Cong. Rec. Vol. 53, Part 8, p. 7396, *et seq.*; Vol. 53, Part 10, pp. 9859, *et seq.*; p. 10093, *et seq.*)

The bill and the proposed amendments with respect to the appointment of receivers and their powers are significant. All of them provide that shareholders of joint-stock land banks shall be liable to creditors; all of them provide for the appointment of receivers; all of them define the powers of both the Federal Farm Loan Board and its receivers, *but none of them expressly empower either the board to authorize receivers to collect, or the receivers to collect, or the board to fix the liability of shareholders to creditors.* (Cong. Rec. Vol. 53, Part 8, p. 7402; Ibid., Part 10, pp. 9867-8, 10101.)

That the failure to grant these powers either to the board or to its receivers was not due to inadvertence may be conclusively demonstrated by means of a comparison of certain sections of the Federal Farm Loan Act with parallel sections of The National Bank Act. As stated by Senator Fletcher, the latter act served as a guide to the framers of the former act.

SECTIONS OF ACTS IN PARI MATERIA.

We set forth on parallel pages the provisions of both the Federal Farm Loan Act and The National Bank Act with respect to the appointment and the powers and duties of receivers. The sections given are those used in 12 U. S. C. A.

"§ 961. **Insolvency of farm loan associations; receivers; powers and duties.** *Upon receiving satisfactory evidence* that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: *Provided,* That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct.* (July 17, 1916, c. 245, § 29, 39 Stat. 381.)

§ 962. **Disposition of moneys collected by receiver; reports.** Such receiver shall pay over all money so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received. (July 17, 1916, c. 245, § 29, 39 Stat. 381.)

§ 963. **Insolvency of land banks, receivers, powers and duties.** Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations. (July 17, 1916, c. 245, § 29, 39 Stat. 381.)"

"§ 192. **Default in payment of circulating notes.** On becoming satisfied, as specified in sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. *Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct;* **and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.** Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings." (R. S. 5234; May 15, 1916, C. 121, 39 Stat. 121.)

(PROVISIONS FOR DISPOSITION OF MONEYS COLLECTED.)

"§ 812. **Individual liability of shareholders.** Shareholders of every joint-stock land bank organized under this chapter shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." (July 17, 1916, c. 245, § 16, 39 Stat. 374.)

"§ 64. **Individual liability of shareholders; transfer of shares.** The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares; except that shareholders of any banking association now existing under State laws, having not less than $5,000,000 of capital actually paid in, and a surplus of 20 per centum on hand, both to be determined by the Comptroller of the Currency, shall be liable only to the amount invested in their shares; and such surplus of 20 per centum shall be kept undiminished, and be in addition to the surplus provided for in this chapter; and if at any time there is a deficiency in such surplus of 20 per centum, such association shall not pay any dividends to its shareholders until the deficiency is made good; and in case of such deficiency, the Comptroller of the Currency may compel the association to close its business and wind up its affairs under the provisions of this chapter relating to dissolution and receivership." (Dec. 23, 1913, c. 6, § 23, 38 Stat. 273.)

EARLY ACTS RELATING TO BANKS.

The following facts may be of interest, and are not without significance:

The Act of February 25, 1791, providing for the organization of the United States Bank, imposed no liability on stockholders. (1 U. S. Stats. at Large, p. 191.) Its charter expired in March, 1811.

In 1811 acts were passed which provided for the organization of certain banks—the Bank of Alexandria among others. These acts, or some of them, provided for liability of directors to creditors in certain cases. (2 U. S. Stats. at Large, p. 621 *et seq.*)

The Act of April 10, 1816, providing for the organization of the Bank of the United States contained a provision that directors should be liable in certain instances to creditors. (3 Stats. at Large, p. 266.) Its charter expired in March, 1836. The agrarian interests and the financial interests of the Nation clashed bitterly over whether its charter should be renewed.

The Act of February 25, 1863, laid the foundation of our present system of national banks. Section 29 of that Act provided for the appointment of receivers by the Comptroller. Section 12 imposed on stockholders a double liability to creditors. However, this Act, just like the Federal Farm Loan Act, contained no provision that receivers might enforce stockholders' liability. (12 U. S. Stats. at Large, p. 665.)

The entire banking system was revised by the Act of June 3, 1864. It contained the provision that is omitted

from the Federal Farm Loan Act, viz., that receivers appointed by the Comptroller

> "* * may if necessary to pay the debts of such association enforce the liability of the stockholders provided for by the twelfth section of this Act." (13 U. S. Stats. at Large, p. 99, § 50.)

NATIONAL AGRICULTURAL CREDIT CORPORATION ACT.

The above mentioned act is also illuminating. It provides for the organization of National Agriculture Credit Corporations. Section 1301 of 12 U. S. C. A. reads as follows:

> "Whenever any National Agricultural Credit Corporation shall be dissolved and its rights, privileges, and franchises declared forfeited as prescribed in the preceding section, or whenever any creditor of any such corporation shall have obtained a judgment against it in any court of record and made application accompanied by a certificate from the clerk of the court, stating that such judgment has been rendered and has remained unpaid for the space of thirty days or whenever the Comptroller of the Currency shall become satisfied of the insolvency of such corporation, he may, after due examination of its affairs in either case, appoint a receiver who shall proceed to wind up the affairs of such corporation. *The receiver so appointed shall exercise the powers and be subject to the restrictions of receivers of national banks; and the Comptroller of the Currency shall have the same powers and duties in connection with the administration of such receivership as he has in reference to the receivership of national banks.*" (Mar. 4, 1923, c. 252, Title II, § 215, 42 Stat. 1471.)

PROPOSED AMENDMENTS TO FEDERAL FARM LOAN ACT.

During the second session of the 69th Congress, Senator McLean introduced Senate Bill 4944 to amend the Federal Farm Loan Act. Thereafter, Senator Fletcher moved to amend the aforesaid bill. Section 40 of the amendment proposed by Senator Fletcher is as follows:

"(a) *The Federal Farm Loan Board may appoint a receiver who shall proceed to close up any joint-stock land bank and enforce the individual liability of the shareholders as provided by this act, in the following cases.*

First. Whenever any such bank shall fail to pay up its capital stock, and shall refuse to go into voluntary liquidation, as provided by this act, for three months after receiving notice of the assessment under section 39, from the Federal Farm Loan Board.

Second. Whenever any such bank fails to put up additional security when called upon to do so as provided by section 19 of this act.

Third. Whenever a creditor of any such bank shall have obtained a judgment against it in any court of record, and made application, accompanied by a certificate from the clerk of the court stating that such judgment has been rendered and has remained unpaid for the space of thirty days.

Fourth. Whenever the Federal Farm Loan Board after due examination of the affairs of any such bank, shall become satisfied of the insolvency of such bank, or that such bank has made loans which are not secured by first mortgages as provided by section 16 of this act.

(b) *Any receiver of a joint-stock land bank appointed under the provisions of this act shall have the same powers and duties and shall be subject to the same restrictions as a receiver appointed by the Comptroller of the Currency to wind up the affairs of a national banking association, and the Federal*

Farm Loan Board shall have the same power over the receivers of joint-stock land banks, as the Comptroller of the Currency has over the receivers of national banking associations.

(c) *Whenever any joint-stock land bank shall have been placed in the hands of a receiver under the provisions of this act, a shareholders' agent may be appointed to wind up the affairs of any such bank, in the same manner, under the same conditions, and with the same duties and powers as provided in the case of shareholders' agents appointed to wind up the affairs of national banking associations, so far as such provisions are applicable.*

(d) All expenses of any receivership shall be paid out of the assets of such bank before distribution of the proceeds thereof."

(Hearings before Committee on Banking and Currency, House of Representatives, second session, on H. R. 15540, a bill to amend the Federal Farm Loan Act, Part 2, No. 32361, United States Government Printing Office.)

During the hearings above mentioned there was placed in the record a letter from Honorable C. S. Dewey, Assistant Secretary of the Treasury, that summarized in parallel columns the provisions of Senate Bill 4944 (the McLean bill) and the provisions of the Fletcher amendment. This summary appears on p. 400 *et seq.* of Document No. 32361 above mentioned. We quote from the summary as follows:

"McLean Bill.

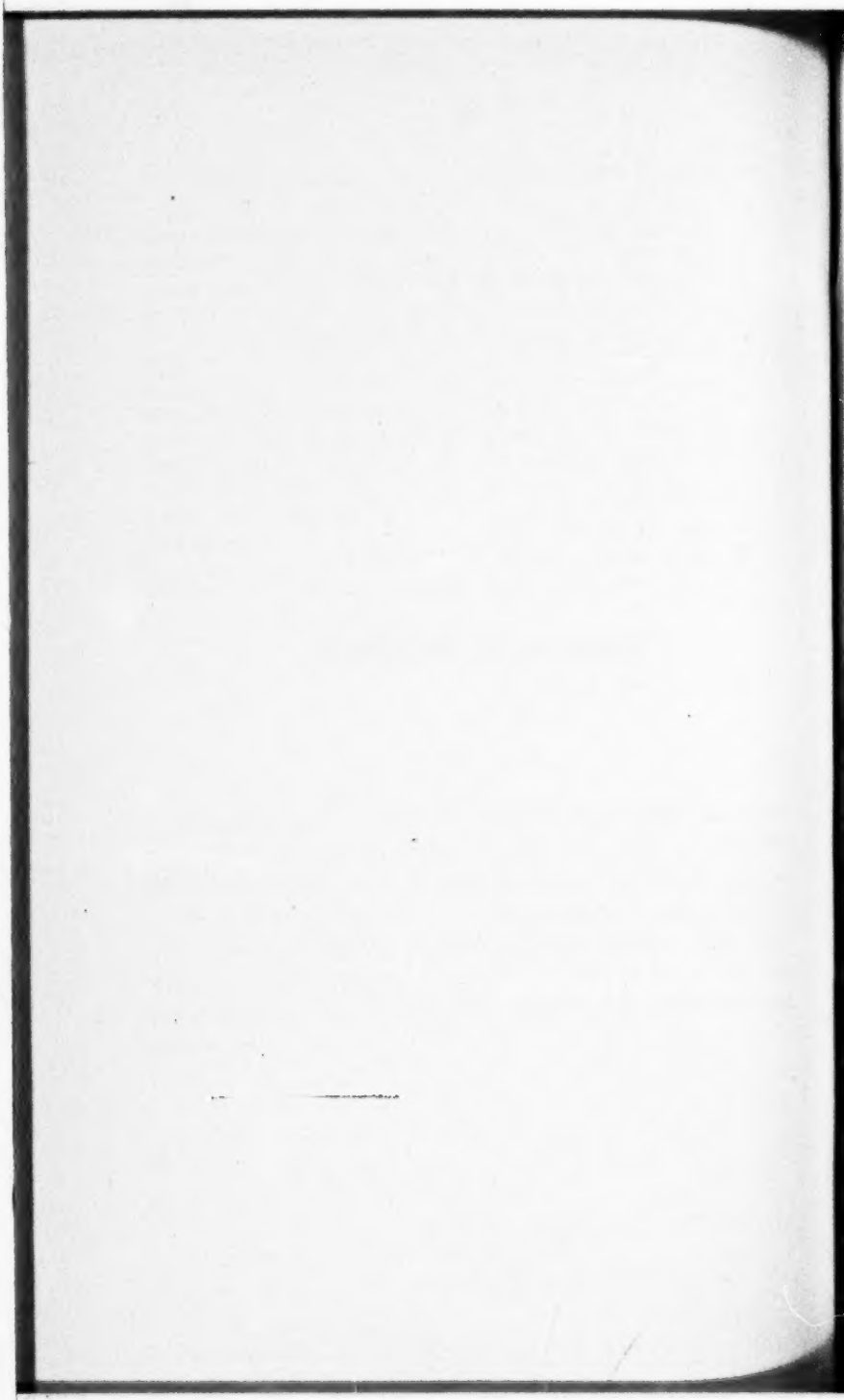
(Sec. 8, p. 12.) Secretary of Treasury to appoint receiver for any joint-stock land bank which fails to pay up its capital stock or refuses to go into voluntary liquidation after notice from Secretary; or whenever the Secretary is satisfied that a joint-stock land bank is insolvent or that such bank has made loans not secured by first mortgages. *Secretary to have same power over receivers of joint-stock land banks as Comptroller of Currency has over national bank receivers.*"

"Fletcher Amendment

(Sec. 8, p. 8.) Farm Loan Board to appoint receiver for any joint-stock land bank which fails to pay up its capital stock or refuses to go into voluntary liquidation after notice from Farm Loan Board; or whenever the Farm Loan Board is satisfied that a joint-stock land bank is insolvent or that such bank has made loans not secured by first mortgages. *Farm Loan Board to have same power over receivers of joint-stock land banks as Comptroller of Currency has over national bank receivers.*"

Both senators wished to grant power which the Congress had purposely withheld, viz., *the same power that the Comptroller of Currency has over national bank receivers, or the power to levy assessments on shareholders and enforce them by means of legal process.* The Congress again refused to grant the power to either the Secretary of the Treasury or the Federal Farm Loan Board.

SUMMARY OF ARGUMENT.



EXPLANATION.

One would suppose that after all the foregoing data we should at last be ready to discuss the Federal Farm Loan Act without further preliminaries. We are not, however, for the reason that more important things must first be settled.

The petitioner's case may be stated in two different ways. *First,* that the Federal Farm Loan Act does not authorize the Federal Farm Loan Board to empower receivers appointed by it to enforce shareholders' liability to creditors. *Second,* that the court below really *amended* the Federal Farm Loan Act while professing to interpret it.

Each statement presupposes or implicitly postulates not only certain rules of interpretation, but certain theories concerning legislative power, judicial power, and the function of interpretation. As Professor Adler says, postulates "are the source of reasons," and "should be admitted so that the ensuing process is reasoning from known grounds rather than the rationalization of a concealed bias or an implicit premise." (Dialectic, p. 126, International Library of Psychology, Philosophy and Scientific Method.)

Moreover, whenever a statute is involved the decisive factors are a court's assumptions concerning the legislative function, the judicial function, and the function of interpretation. To paraphrase Chesterton, the question is not whether these assumptions affect matters, but whether in the long run anything else affects them. All too often these vital assumptions are left vague and unformulated, and so, to do their work in the dark.

The drift of the Argument may be indicated as follows:

I.

A *statute* is involved. It certainly must be read, and possibly *interpreted.* The Circuit Court of Appeals really *amended* the statute, thereby exercising *legislative* power, contrary to the Constitution.

There is a distinction between legislative power and judicial power. *What is it?* . . . We evolve in a few paragraphs a rough, working-formula sufficient for the needs of this case, and then select the unshakeable rock upon which to erect the superstructure of our argument. (Pages 35-38, *infra.*)

II.

What *is* the function of interpretation?

The conclusion is, that under our form of government, and so far as an Act of Congress is concerned—

> *The function of interpretation is the discovery, in cases of uncertainty or doubt, of the intention that the Congress has effectively expressed in and by the said Act, or, in other words, the meaning of the Act.*

That is the doctrine of this Court. The doctrine is, that where an Act is plain there is no need of interpretation, and that the purpose of interpretation in cases of doubt is to discover the intention of the Congress.

The court below resorted to construction, despite the fact that the Act was so plain that construction had no office to perform. (Pages 39-40, *infra.*)

III.

The courts have enunciated certain so-called "rules of interpretation."

There is the "it would have been easy to say so" rule.

The rule, *expressio unius est exclusio alterius.*

These are not really rules of interpretation, but are the logical consequences of the division of powers made by the Constitution. (Pages 41-45, *infra.*)

IV.

Section 961 of 12 U. S. C. A. provides just what the Federal Farm Loan Board and its receivers may do in respect of insolvent joint-stock land banks.

It gives them power merely to convert into cash the *bank's* property and assets. Shareholders' liability to *creditors* is *not* a *corporate* asset.

Nowhere does the Act grant to the Board or its receivers the power to enforce shareholders' liability to creditors. Obviously, the power does not exist, for at least two reasons:

1. Not to grant is to prohibit, or *expressio unius est exclusio alterius.*

2. It would have been easy to say so, if the Congress had intended to grant the power.

The Act is plain, and the *litera legis* controls.

The National Bank Act, which was used as a guide by the framers of the Federal Farm Loan Act, and other acts conclusively show that the Congress purposely withheld the claimed power. (Pages 46-52, *infra.*)

V.

Section 831 (j) of 12 U. S. C. A. adds nothing to the powers of the Federal Farm Loan Board. It would have "such incidental powers" as were "necessary or requisite to fulfill its duties and carry out the purposes of this chapter" even in the absence of sub-section (j).

There is nothing in Section 831 that is even relevant to the question presented by this record.

As said by this Court:

> "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld, nor to enlarge powers given; but only to carry into effect those which are granted." (*First National Bank* v. *Missouri*, 263 U. S. 640, 659.)

Of course "the purposes" must find effective expression in the act.

In the entire Act there is no duty imposed upon, nor power granted to, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite.

There is no logical defect in either the *litera legis* or the *sententia legis;* and the court below usurped legislative power when, professing to interpret, it *amended* the Act. (Pages 53-69, *infra.*)

VI.

Analysis of the Circuit Court of Appeals' opinion.

The court disregards the plain language of the Act, and resorts to construction when there is no need of it.

The opinion rests upon the demonstrably erroneous assumption that it is the purpose of the Act *to pay the debts* of insolvent banks *through the agency of the Board and its receivers.* The fact is, that it is the policy of the Act that the *assets* of insolvent banks shall be converted into cash by receivers acting under the direction of the Board, or courts of competent jurisdiction, and paid into the Treasury, subject to the order of the Board, *and that shareholders' liability to creditors, if any, shall be enforced only by creditors.*

The opinion also contains the following antinomy:

> It finds that the omission from the Federal Farm Loan Act of the clause
>
> > "and may, if necessary to pay the debts of such association, enforce the individual liability" of the stockholders,
>
> is not conclusive against the power of the receiver to maintain this action, and then bases the conclusion that the power exists upon cases arising under the National Bank Act—*or upon the very clause in question!* (Pages 70-85, *infra.*)

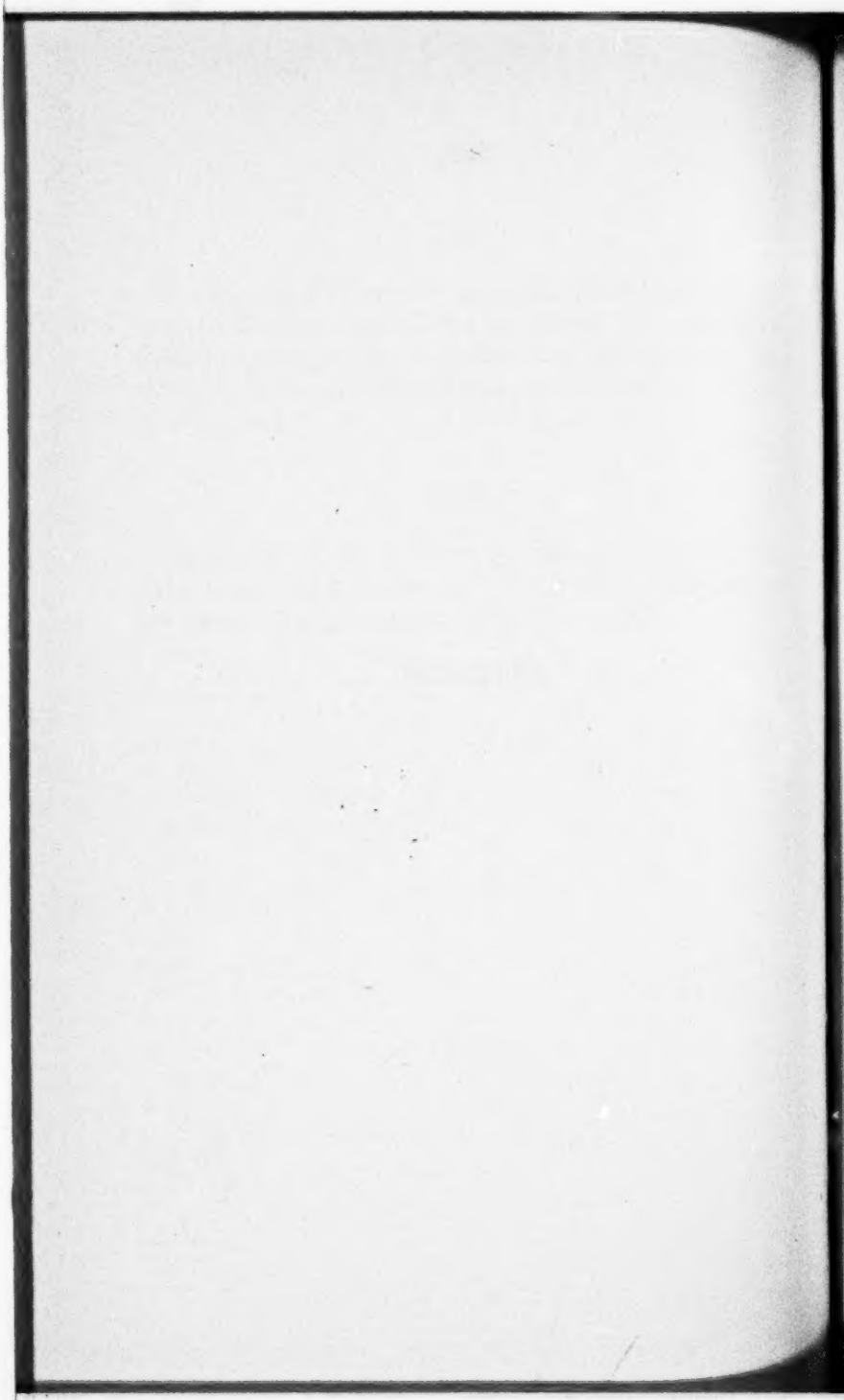
VII.

The radical differences between the National Bank Act and the Federal Farm Loan Act clearly prove that the Congress intended that the amount of shareholders' liability should be determined by a court of equity. (Pages 86-91, *infra.*)

VIII.

Section 37 of 12 U. S. C. A. has no application to Joint-Stock Land Banks, nor to the facts disclosed by the record. (Pages 92-100, *infra.*)

ARGUMENT.



I.

A working distinction between LEGISLATIVE power and JUDICIAL power suggested.

The ROCK upon which we build our case.

The result of the Circuit Court of Appeals' 'interpretation' of the Federal Farm Loan Act is all that even the most ardent advocate of "free judicial decision" could wish. Unquestionably the court *amended* the act, which nowhere provides that receivers appointed by the Board may enforce the liability of shareholders to creditors, or that the Board or any court may authorize them to do so.

While admitting that "a court may not read into a statute language or purposes not there found" (p. 470), and that "the right [to enforce shareholders' liability] was not given to the receiver as it was in the Banking Act" (p. 471), the Circuit Court of Appeals, nevertheless 'found' in the Federal Farm Loan Act the "right" in question. The supposed "right" is no part of the act. It was not placed there by the Congress. The conclusion is that the "right" found in the act had been previously hidden there by the Circuit Court of Appeals. And this brings up the distinction between legislative and judicial power. It is unnecessary to quote the articles of the Constitution that grant legislative powers to the Congress and judicial power to the courts.

What *is* legislative power? Wherein does it differ from *judicial* power? These are questions more readily asked than answered. Perhaps a few statements taken from this Court's opinions may suggest a rough, working formula sufficient for the needs of this case.

In

The Minnesota Rate Cases, 230 U. S. 352, 433, 57 L. ed. 1511, 33 S. Ct. 729,

the Court said:

> "It is the function of this court to interpret and apply the law already enacted, but not under the guise of construction to provide a more comprehensive scheme of regulation than Congress has decided upon."

And in

Carey v. *Donohue,* 240 U. S. 430, 437, 36 L. ed. 386:

> "* * * we are not at liberty to supply by construction what Congress has clearly shown its intention to omit."

And in

United States v. *First National Bank,* 234 U. S. 245, 260:

> "If the true construction has been followed with harsh consequences, it cannot influence the courts in administering the law. *The responsibility for the justice and wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make, the laws."* (Citing cases.)

Courts, as a rule, do not act *sua sponte.* Some one must invoke them. And in order to get them to act the plaintiff must show that the defendant has been guilty of a breach of duty. (Kocourek's Jural Relations, p. 350.) For instance, it is claimed in this case that petitioner was guilty of a breach of duty in refusing to pay to the receiver the alleged amount of his (petitioner's) liability to creditors.

What, then, is the distinction between *legislative* power and *judicial* power?

Roughly, legislative power (under our form of government) is the capability to make legal rules, whereas judicial power is the legal capability to impose sanctions for breach of duty in concrete cases.

The making of legal rules is almost the sole function of American legislatures, and certainly the chief business of our courts is the settlement of controversies. While courts always have made legal rules, and probably always will, the *necessity* of their now doing so has largely been relieved by the existence of free legislative bodies, which meet at frequent intervals. Their *power* to make legal rules has also been greatly curtailed, not only by precedent, custom, and public opinion, but by constitutional provisions. Their proper activities in this respect have been aptly characterized as *interstitial*. And "the lines within which movement is permitted and beyond which there is to be no travelling" have been pretty plainly chalked. In short, under our form of government legal rules are legislative *staples* and judicial *by-products*. In the settlement of controversies, which is their main business, the courts cannot make legal rules for a case in hand if the legislature has already done so. They cannot *substantially* add to or subtract from a constitutional legislative act. (See authorities, pp. 44-5 *infra*.)

Upon this rock, then, we build our case: In order to determine whether petitioner was guilty of a breach of duty in refusing to pay to respondent the alleged amount of his (petitioner's) liability to creditors of Bankers Joint Stock Land Bank of Milwaukee, we must first determine whether the Congress has ordained that the Federal Farm Loan Board may empower its receivers to enforce

shareholders' liability to creditors. If it has not, then no court can *rightfully* do so. It may have the *power* wrongfully and in defiance of the Constitution to do so, but not the right. And the same thing is true if the Congress has ordained that creditors may, and that the Board may not, enforce shareholders' liability to creditors. Even Duguit will agree to this. (Duguit, *Traité de Droit Constitutionnel,* 2e edit., vol. 2, pp. 91-2.) And this brings us to the function of interpretation.

II.

Under our form of government, and so far as an Act of of Congress is concerned—

> **The function of interpretation is the discovery, in cases of uncertainty or doubt, of the intention that the Congress has effectively expressed in and by the said Act or, in other words, the meaning of the Act.**

The cases set forth in the margin conclusively demonstrate that this is the firmly-established doctrine of this Court.[5]

As will hereafter appear, the Federal Farm Loan Act is so plain that even he who runs may read its meaning, or the intention of the Congress. The necessity for con-

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5. United States v. Crosley, 196 U. S. 327, 333, 25 S. Ct. 261, 49 L. ed. 497:

> "For while we may not add to or take away from the terms of a statute, the main purpose of construction is to give effect to the legislative intent as expressed in the act under consideration."

Jones v. Guaranty, etc., Co., 101 U. S. 622, 626, 25 L. ed. 1030:

> "The intent of the law-maker is the law."

Louisville and Nashville Railroad Co. v. Mottley, 219 U. S. 467, 474, 55 L. ed. 297, 31 S. Ct. 265:

> "Our duty is to ascertain the intention of Congress in passing the statute upon which the railroad company relies as prohibitive of the further enforcement of the agreement in suit."

Thompson v. Thompson, 218 U. S. 611, 619, 31 S. Ct. 117, 54 L. ed. 1180:

> "We do not think it was the intention of Congress * * * to revolutionize the law governing the rela-

struction does not exist; and the lower court's attempt to construe an act that needed, not construction, but only enforcement, resulted in auto-obfuscation, and an unconstitutional exercise of legislative power.

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tion of husband and wife as between themselves. We think the construction we have given the statute is in harmony with its language and is the only one consistent with its purpose."

United States v. Mescall, 215 U. S. 26, 32, 30 S. Ct. 19, 54 L. ed. 77:

"His act comes within the letter of the statute as well as within its purpose, and the intent of Congress in the legislation is the ultimate matter to be determined."

Burton v. United States, 202 U. S. 344, 26 S. Ct. 688, 50 L. ed. 1057:

"There is, in our judgment, no escape from this interpretation consistently with the established rule that the intention of the legislature must govern in the interpretation of a statute. 'It is the legislature, not the court, which is to define a crime, and ordain its punishment.'" (Citing cases.)

Indianapolis and St. Louis R. R. Co. v. Horst, 93 U. S. 291, 300, 27 L. ed. 885:

"Here, the question is one of legislative intent. The intention of the law-maker constitutes the law * * *"

Raymond v. Thomas, 91 U. S. 715, 23 L. ed. 434:

"The meaning of the legislature constitutes the law."

United States v. Fisher, 109 U. S. 145, 3 S. Ct. 154, 27 L. ed. 885:

"Certain well-settled rules of interpretation are applicable to this case. One is that a legislative act is to be interpreted according to the intention of the legislation apparent on its face, Wilkinson v. Leland, 2 Pet. 627;"

III.

The conclusion reached by the Circuit Court of Appeals violates the "it would have been easy to say so" rule, the rule expressio unius est exclusio alterius, and other rules enunciated by this Court.

The rules upon which we rely and wish to recall to the mind of the Court are as follows:

> "We do not think it a reasonable construction of the statute to say that the vast mass of postal matter know as 'letters' was intended by Congress to be expressed in a term so general and vague as the word 'writing', *when it would have been just as easy, and also in strict accordance with all its other postal laws and regulations, to say 'letters' when letters were meant.*"
>
> *U. S.* v. *Chase*, 135 U. S. 255, 259, 10 S. Ct. 756, 34 L. ed. 117.

> "We have no doubt it was the wish of those who procured the passage of the special statute under which the Court of Claims took jurisdiction of this suit, to obtain from Congress authority for that court, to give a judgment against the United States at least for interest in case it should be found that payments on the contracts held by the claimants had been reasonably delayed. *But if Congress had desired to grant such authority, it would have been easy to have said so in express terms; and because it did not say so, we are led irresistibly to the conclusion that it did not intend to give any such power.*"
>
> *Tillson* v. *U. S.*, 100 U. S. 43, 46, 25 L. ed. 543.

A few of the great many other cases applying the "it would have been easy to say so" rule, are:

Vicksburg, etc. R. Co. v. *Dennis,* 116 U. S. 665, 669, 6 S. Ct. 625, 29 L. ed. 770.

Baltimore, etc. R. Co. v. *Grant,* 98 U. S. 398, 403, 25 L. ed. 231.

United States v. *First Nat. Bank,* 234 U. S. 245, 262, 34 S. Ct. 846, 58 L. ed. 1298.

Shaw v. *Railroad Co.,* 101 U. S. 557, 565, 25 L. ed. 892.

> *"If these were intended, surely the statute would have said something more, etc."*

Austin v. *U. S.,* 155 U. S. 416, 433, 15 S. Ct. 167, 39 L. ed. 206.

> *"If such had been the intention of Congress, no reason suggests itself why Congress should not have unequivocally said so;"*

And then there is the rule—*expressio unius est exclusio alterius.*

Acts of Congress conferring appellate jurisdiction on the Supreme Court operate as a negation or exception of this jurisdiction in other cases.

Durousseau v. *U. S.,* 6 Cranch, 307, 314, 3 L. ed. 234, 2 Cond. Rep. 380, 382.

National Exchange Bank v. *Peters,* 144 U. S. 573, 12 S. Ct. 767, 36 L. ed. 546.

See also:

Wells v. *Pontotoc County,* 102 U. S. 625, 632, 26 L. ed. 122.

Case v. *Kelly,* 133 U. S. 21, 26, 10 S. Ct. 216, 33 L. ed. 515.

Lastly, the true rule is that statutes are to be construed as they were intended to be construed at the time they were written:

Schuyler County v. *Thomas*, 98 U. S. 169, 172, 25 L. ed. 88.

> *"The after wisdom obtained by unfortunate results, cannot justly be applied in their interpretation."*

United States v. *Union Pacific Railroad Co.*, 91 U. S. 72, 81.

Woodward v. *DeGraffenreid*, 238 U. S. 284, 293, 35 S. Ct. 764, 59 L. ed. 1310.

Louisville & N. R. R. Co. v. *Mottley*, 219 U. S. 467, 474, 31 S. Ct. 265, 55 L. ed. 297.

Platt v. *Union Pac. R. Co.*, 99 U. S. 48, 64, 25 L. ed. 424.

U. S. v. *First Nat. Bank*, 234 U. S. 245, 260, 34 S. Ct. 846, 58 L. ed. 1298.

The foregoing rules are commonly called *rules of construction, or interpretation.* This is due to faulty analysis, since interpretation is merely a conscious effort to resolve *doubts* that arise as to the meaning of a statute or other legal document, etc. As said by this Court, "the province of construction lies wholly within the domain of ambiguity."

Hamilton v. *Rathbone*, 175 U. S. 414, 421, 20 S. Ct. 155, 44 L. ed. 219.

U. S. v. *Lexington Mill Co.*, 232 U. S. 399, 409-10, 34 S. Ct. 337, 58 L. ed. 658.

Lake County v. *Rollins*, 130 U. S. 662, 670, 9 S. Ct. 651, 32 L. ed. 1060.

If the foregoing rules were true rules of construction they would aid us in arriving at the meaning of the Act,

or the intention of the Congress, which, obviously, they do not. In reality, these so-called rules of construction are "theorems, whose function is the analysis of subordinate implications of the postulates [Point I]." (Adler, op. cit. pp. 153-4.) In other words they are merely the *logical consequences* of the distinction between legislative power and judicial power. They necessarily follow from, and are implied, and demonstrable by, the aforesaid distinction. The same thing is true of the following so-called "rules of construction."

> "And it is the intention expressed in the statute, and that alone, to which the courts may lawfully give effect. *They may not assume or presume purposes and intentions that the terms of the law do not indicate, and then enact and expunge provisions to carry out those supposed intentions.*"
>
> *Wabash R. Co.* v. *U. S.* (C. C. A.) 178 Fed. 5, 12.
>
> *U. S.* v. *Colorado, etc. R. Co.* (C. C. A.) 157 Fed. 321.
>
> *U. S.* v. *Ninety-nine Diamonds,* (C. C. A) 139 Fed. 961, 964.

> *"No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."*
>
> *U. S.* v. *Goldenberg,* 168 U. S. 95, 103, 18 S. Ct. 3, 42 L. ed. 394.

> *"It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases because no good reason can be assigned why they were excluded from its provisions."*
>
> *Dunn* v. *Reid,* 10 Pet. 526, 527, 9 L. ed. 519.
>
> *Bate Refrigerating Co.* v. *Sulzberger,* 157 U. S. 1, 36, 16 S. Ct. 508, 39 L. ed. 601.
>
> *Merritt* v. *Welsh,* 104 U. S. 694, 704, 26 L. ed. 896.

"Of course it is familiar learning that a word may be interpolated or suppressed if it be necessary to make the language harmonize with the obvious intent of the lawmaker. *But I know of no rule of construction which permits us to beg the intent, and then to interpolate or suppress a word to carry out such intent. Rather it is to be presumed that the very language was used which expresses the intent.*"

Northern Pac. R. Co. v. *U. S.*, 36 Fed. 282, 287, Brewer, J.

Now, in the light of the foregoing, let us direct our attention to the Federal Farm Loan Act.

IV.

Section 961 of 12 U. S. C. A. provides just what the Federal Farm Loan Board and its receivers may do in respect of insolvent joint-stock land banks. It gives them power merely to convert into cash the BANK'S property and assets.

Shareholders' liability to creditors is not a CORPORATE asset.

Nowhere does the Act grant to the Board or its receivers the power to enforce shareholders' liability to creditors.

The Act is plain, and the litera legis controls.

Section 961 of 12 U. S. C. A. (p. 16 *supra*) provides for the appointment of receivers and defines not only their powers and duties but the powers of the Federal Farm Loan Board and of courts of competent jurisdiction to direct receivers in the liquidation of insolvent joint-stock land banks.

The Court will observe that the section nowhere provides, either that receivers appointed by the Federal Farm Loan Board may enforce shareholders' liability to creditors, or that the said Board or any court may authorize them to do so. Clearly, this calls for the application of the "it would have been easy to say so" rule (pp. 41-42, *supra*).

The Court will also observe that the powers not only of receivers, but of the Federal Farm Loan Board, are limited solely to the property and assets of *insolvent banks*. They do not extend to the property or as-

sets of third persons. Of course, the liability imposed on shareholders "for all contracts, debts, and engagements" of a joint-stock land bank (§ 812, p. 18, *supra*), is not a *corporate* asset. It is the property of creditors. And the books are full of cases holding that neither the corporation, nor its receiver, even though directed to do so by the court appointing him, can enforce shareholders' liability to creditors in the absence of express statutory authority:

> "Since the liability is not an asset of the corporation unless made so by the statute, it does not pass under an assignment by the corporation for the benefit of creditors, so as to entitle the assignee to enforce it, nor, in the absence of provision to such effect, can the liability be enforced by an assignee in insolvency, or a trustee in bankruptcy, of the corporation, by an agent appointed by the stockholders to wind up the affairs of the corporation, or by a receiver appointed by a court of equity, whether appointed at the suit of a stockholder or at the suit of a creditor, and whether he is a general receiver invested with 'all the estate, property, and equitable interests' of the corporation, or a special receiver appointed for the purpose. 'Neither a receiver, nor an assignee in bankruptcy, nor an assignee under a voluntary general assignment for the benefit of creditors, each of whom represents creditors as well as the insolvent, acquires any right to enforce a collateral obligation given to a creditor, or to a body of creditors, by a third person, for the payment of the debts of the insolvent.'

Of course, special statutory provisions may change this rule. Statutes making stockholders individually liable for corporate debts may in express terms provide for the enforcement of the liability by a receiver of the corporation; and it may be enforced by a receiver, assignee for creditors or trustee in bankruptcy when it is placed on the same footing as unpaid subscriptions by being expressly or impliedly made or declared a part of the assets

of the corporation, to be collected for the benefit of all the creditors ratably.

In some states provision is made for the enforcement of the individual liability of stockholders in banks by the commissioner or superintendent of banks in behalf of creditors.

Whether or not the liability is personal to the creditors so that they alone may sue, or is an asset of the corporation so that it may be enforced by the corporation's trustee in bankruptcy, is to be determined by the law of the state where the corporation was organized, and the federal courts will therefore follow the decisions of the courts of that state in determining it. The fact that the corporation was authorized to do business in the state where the action is brought does not affect the question, or give the trustee a right to sue there where the statutes of the state where the corporation was organized give that right exclusively to creditors." (7 Fletcher Cyc. of Corp. § 4214, p. 7341.)

And in

6 *Thompson on Corp.* (3d ed.) § 4811 (original § 4801)

it is said:

"A principle applicable perhaps to all liability of stockholders imposed by statute is that such liability is not ordinarily to the corporation and can not be enforced by it in any form of action, or on the theory that it is a trustee for its creditors. It is not a part of the assets of the corporation and it has no right to or interest in the liability. It has been laid down that this liability runs directly from the stockholders to the creditors of the corporation. For these reasons it can not be assigned by the corporation to a trustee for the benefit of creditors. Neither can the corporation enforce this liability against the stockholders by assessment. And in the absence of statutory provisions it is generally held that a receiver of the corporation can not enforce this statutory liability. Under the statute of Utah

it has been held that an action to enforce the individual liability of stockholders to creditors must be brought by the creditors, and not by the corporation or its receiver. A few courts have denied the doctrine that the statutory liability is not a corporate asset."

See the following typical cases:

Zang v. *Wyant,* 25 Colo. 551, 56 Pac. 565.

Seegmiller v. *Day,* 249 Fed. 177.

Minnesota Baseball Co. v. *City Bank,* 66 Minn. 441, 69 N. W. 331.

Apparently, Washington and Pennsylvania, and perhaps one or two others, are the only states that have denied the doctrine that this statutory liability is not a corporate asset.

Not only the "it would have been easy to say so" rule, but the rule *expressio unius est exclusio alterius* applies here.

The grant of specific powers only is in effect a denial of others. A prohibition is implied from the failure to grant them. *First National Bank* v. *National Exchange Bank,* 92 U. S. 122, 128; *California Bank* v. *Kennedy,* 167 U. S. 362, 367. See also cases cited on p. 42 *supra,* and pp. 61-62 *infra.*) This rule is particularly applicable here. The Congress provided that shareholders should be liable "for all contracts, debts and engagements" of a joint-stock land bank, to a specified amount. It thereby gave persons having claims against a joint-stock land bank the right to enforce them against shareholders. The Congress could have provided that receivers when authorized by the Federal Farm Loan Board should prosecute these claims, but it did not do

so. It doubly failed to do so. First, by the failure to take away from creditors the right theretofore granted to them, and secondly, by specifying what receivers might do under the direction and control of the Board. After granting to creditors the right to enforce claims against shareholders, an express provision, unmistakable in its terms, was necessary to vest that right in either the Board or the receivers appointed by it. No mere inference would do, for all the inferences are clearly the other way. As Mr. Justice Sutherland pertinently said in an analogous case:

> "* * * the reasons adduced against the existence of the power substantively are conclusive against its existence incidentally; for it is wholly illogical to say that a power which by a fair construction of the statutes is found to be denied nevertheless exists as an incidental power. Certainly an incidental power can neither avail to create powers which expressly or by reasonable implication, are withheld, nor to enlarge powers given; but only to carry into effect those which are granted." (*First National Bank* v. *Missouri*, 263 U. S. 640, 659.)

In

In re *German Savings & Loan Assn.* (C. C. A. 7th Cir.) 253 Fed. 722, 723,

the Court, through Baker, C. J., said:

> "If a corporation is to be treated as having a natural person's freedom of action in all directions except those prohibited, it would be senseless for a Legislature to enumerate granted powers; it would be necessary only to list prohibitions. But the fundamental principle is the converse. A corporation has only the powers that are expressly named and such others as are necessary to the exercise of the named powers. Silence is prohibition. For if a particular power is necessary to the exercise of a named power, it by that necessity becomes itself a named power."

That these vital matters did not escape the attention of the Congress is certain. The legislation recommended by the United States Commission, of which Senator Fletcher was Chairman, imposed double liability to creditors on shareholders, and provided that banks should be liquidated in accordance with rules to be devised by the commissioner (p. 13, *supra*). The act finally passed does not leave these matters to the discretion of the Federal Farm Loan Board. It expressly provides what may be done. It follows, therefore, that the power of receivers to enforce the liability of shareholders to creditors does not exist, and that it cannot be conferred upon them by the said Board.

Further proof that a deliberate policy was adopted by the Congress in respect of this matter is that The National Bank Act was used as a guide (pp. 13, 16-8, *supra*); that in defining the power of the receivers and the Federal Farm Loan Board, the Congress scrupulously followed The National Bank Act down to the provision

> "and may if necessary to pay the debts of such association, enforce the individual liability of the stockholders"

when there was a significant stop.

Then there are the proposed amendments to the Federal Farm Loan Act that were moved during the second session of the 69th Congress (pp. 22-24, *supra*). The Congress, however, refused to grant to the Federal Farm Loan Board or its receivers the power to enforce shareholders' liability to creditors—a power that had been expressly granted to the Comptroller of the Currency and his receivers in respect of insolvent national banks. To say that the Congress did not deliberately withhold this power from

the Federal Farm Loan Board is to disregard undisputed facts. It is also to disregard *legislative practice*, which is evidenced by the fact that the Congress has incorporated express provisions of a like character in Acts both before and since the passage of the Federal Farm Loan Act. (Pages 20-21, *supra.*)

There is a passage in Salmond's excellent Jurisprudence that is applicable here. Referring to the distinction that Continental lawyers make between *grammatical* and *logical* interpretation, he says that the former

> "is that which regards exclusively the verbal expression of the law. It does not look beyond the *litera legis.* * * * in all ordinary cases the courts must be content to accept the *litera legis* as the exclusive and conclusive evidence of the *sententia legis.* They must in general take it absolutely for granted that the legislature has said what it meant, and meant what it has said. *Ita scriptum est* is the first principle of interpretation. Judges are not at liberty to add or take from or modify the letter of the law, simply because they have reason to believe that the true *sententia legis* is not completely expressed by it. That is to say, in all ordinary cases grammatical interpretation is the sole form allowable." (Jurisprudence, 6th ed. pp. 137-8.)

This, too, is not a true rule of interpretation (pp. 43-44, *supra.*) Where an act is plain there is no occasion to interpret it. Interpretation, like thought, is purely *instrumental.* It is resorted to only in cases of obstruction, difficulty, doubt. When a mere *reading* of an act enables us to state its meaning there is no *interpretation* in the proper, technical sense.

The excerpt from Salmond is, however, a good statement of the limitation under which courts labor, by reason of the fundamental distinction between legislative and judicial power.

V.

Section 831 (j) of 12 U. S. C. A. adds nothing to the powers of the Federal Farm Loan Board. It would have "such incidental powers" as were "necessary or requisite to fulfil its duties and carry out the purposes" of the Act, even in the absence of subsection (j).

As held by this Court—

> **"* * * an incidental power can avail neither to create powers which expressly or by reasonable implication are withheld, nor to enlarge powers given; but only to carry into effect those which are granted."**

In the entire Act there is no duty imposed upon, nor power granted to, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite.

There is no logical defect in either the litera legis or the sententia legis; and the court below usurped legislative power when, professing to interpret, it amended the Act.

We now ask the Court to consider section 831 of 12 U. S. C. A. (Appendix, pp. 103-4, *infra.*) The Court will observe that this section deals almost exclusively with the administrative and visitorial powers of the Federal Farm Loan Board. Aside from subsection (a), which is irrelevant to this controversy, and subsection (j), which will presently be noticed, the section treats principally of the power of the Board to regulate and supervise, in the conduct of their business, the banks and associations organized under the Act.

There is nothing in the entire section that has the slightest relevancy to this controversy except subsection (j), which is that the Federal Farm Loan Board may

> "exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter."

This section adds nothing to the powers of the Board. It would be most unreasonable, indeed, to impose duties and at the same time to withhold "such incidental powers" as were necessary or requisite to perform them. Agents, servants, bailees, trustees, public officers, etc., have these incidental powers as a matter of course. Corporations—public, private, and municipal—also have in addition to their express powers, those incidental powers that are necessary to their existence or to the exercise of powers expressly granted. The Board would have "such incidental powers," even in the absence of subsection (j).

Now what is an incidental power?—disregarding for the moment the definition given in the subsection itself. In

> *First National Bank* v. *Missouri*, 263 U. S. 640, 659,

this Court said:

> "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld *nor to enlarge powers given; but only to carry into effect those which are granted.*"

This pragmatic definition might be put into more words, or elaborated, and illustrated, all of which would add practically nothing to our knowledge concerning the

essential nature of an incidental power. We set forth in the margin a few cases where the principles above stated have been applied to municipal[5] and private corporations.[6]

The incidental powers mentioned in subsection (j)—"such as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter"—are merely the incidental powers that the Board would have as a matter of law in the absence of the subsection in question.

"PURPOSES" OF THE ACT AND THEIR RELATION TO POWERS OF THE BOARD.

It is needless to state that the duties of the Board mentioned in Section 831 (j) are the duties of the Board created or imposed by the Federal Farm Loan Act, which constitutes Chapter 7 of Title 12 of the United States Code. In other words, the *Act* is the only source of their duties. And the same thing is true in respect of "the purposes of this chapter." *These purposes must be effectively expressed in the Act proper.* They must be found in either (a) the provisions regarding the organization, powers and duties of the banks and associations mentioned in said Act, or (b) the provisions relating to the creation, powers and duties of the Board. We say this for the reason that the Circuit Court of Ap-

5. Arms v. City of Chicago, 314 Ill. 316, 145 N. E. 407.
Potson v. City of Chicago, 304 Ill. 222, 136 N. E. 594.
People ex rel. City of Olean v. Western New York & Pennsylvania Traction Co., 214 N. Y. 526, 108 N. E. 847.
Thorp v. Blake, (Tex.) 171 S. W. 549.

6. In re German Savings & Loan Ass'n., (C. C. A. 7th Cir.) 253 Fed. 722.

peals seems to have thought that the "purposes" of the Act had some mysterious and potent quality of spontaneous generation of powers that could not be assigned to any particular collocation of words.

Let us consider for a moment the purposes of the Act and their relation to the powers of the Board. A numerous body of our citizens, upon whom the rest of us depend for food, were in dire straits. The Government devised the Federal Farm Loan Act for the main purpose of relieving agrarian distress. At the same time it created agencies which could be used by the United States in their fiscal affairs. Contemporary economic and political history, to say nothing of history of the Act and the debates in Congress, confirm this view of the Act.

The same conclusion is reached if we look solely to the Act itself. We see at a glance that its purpose—its main purpose—was to extend aid to farmers. This purpose finds expression not only in the title of the act, but in almost every part of the act proper. *The purpose of the Act, then, was to extend Government aid to farmers;* and yet, the Federal Farm Loan Board cannot, for that reason, conduct courses in agronomy, or support the price of wheat on the Chicago Board of Trade, or fix the wages of farm labor, or distribute radios to farmers to relieve the monotony of long winter evenings.

The Circuit Court of Appeals also referred to the title of the Act.[6] It furnishes no support to the conclusions reached by the court below, even if

6. "To provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

we ignore the repeated decisions of this Court that "the title of an Act furnishes little aid in the construction of its provisions," and that it "has little weight" even when the meaning of the act proper is doubtful.[7]

No one would contend that by virtue of the title of the Act, the Federal Farm Loan Board could fix the rate of interest to be charged by persons or corporations (not organized under the Act) engaged in making farm loans, or compel the mail-order houses to extend credit to farmers, or fix a tariff on imports of farm products. Why? Simply because the *Act itself, regardless of its purposes, must be looked to in order to ascertain the powers granted by the Congress to the aforesaid Board.*

"The spirit of the act," said Mr. Justice Story, "must be extracted from the words of the act, and not from conjectures *aliunde.*" (*Gardner* v. *Collins*, 2 Pet. 58, 92, 7 L. ed. 347.)

> "Where the language of the act is clear, there is great danger in departing from the words used, to give effect to the law which may be supposed to have been designed by the legislature." (*Dunn* v. *Reid*, 10 Pet. 524, 526, 9 L. ed. 519.)

> "Where the will of the legislature is clearly expressed, it ought to be followed without regard to consequences, and a construction, derived from a

7. Haddon v. Collector, 5 Wall. 107, 110, 18 L. ed. 518.
U. S. v. Union Pacific Railroad Co., 91 U. S. 72, 82, 23 L. ed. 224.
Goodlett v. Louisville, etc., R. Co., 122 U. S. 391, 408, 7 S. Ct. 1254, 30 L. ed. 1230.
Patterson v. The Eudora, 190 U. S. 169, 172, 23 S. Ct. 821, 47 L. ed. 1002.
Cornell v. Coyne, 192 U. S. 418, 430, 24 S. Ct. 383, 48 L. ed. 504.

consideration of its reason and spirit, should never be resorted to, but where the expressions are so ambiguous as to render such mode of interpretation unavoidable." (*Denn* v. *Harnden*, 1 Paine 61, 9 Fed. Cas. No. 4,819.)

"Nothing is better settled than that in the construction of a law its meaning must first be sought *in the language employed*. If that be plain, it is the duty of the courts to enforce the law as written, provided it be within the constitutional authority of the legislative body which passed it. *Lake County* v. *Rollins*, 130 U. S. 662, 670, 671; *Bate Refrigerating Co.* v. *Sulzberger*, 157 U. S. 1, 33; *United States* v. *Bank*, 234 U. S. 245, 258; *Caminetti* v. *United States*, 242 U. S. 470, 485." (*United States* v. *Standard Brewery*, 251 U. S. 210, 217, 64 L. ed. 229, 40 S. Ct. 139.)

In the case just cited the *Act* itself expressly declared its purposes, and then effectuated those purposes by means of specific provisions. See also

White v. *United States*, 191 U. S. 545, 551-2, 24 S. Ct. 171, 48 L. ed. 295.

Even if the title of the Act contained a statement that one of its purposes was to empower the Federal Farm Loan Board to enforce shareholders' liability to creditors of banks and associations organized thereunder, the question would immediately arise whether the purpose had been consummated by means of effective provisions to that end. Mere will, wish, purpose, intention, amounts to nothing. To return to the matter of

INCIDENTAL POWERS.

The question to be determined may be stated thus:

DOES THE ACT GRANT ANY POWER TO OR IMPOSE ANY DUTY ON THE FEDERAL FARM LOAN BOARD THAT CANNOT BE CARRIED INTO EFFECT OR PERFORMED UNLESS THE BOARD ALSO HAS THE POWER TO ENFORCE THROUGH ITS RECEIVERS THE LIABILITY OF SHAREHOLDERS TO CREDITORS?

If there is any power or duty of this kind it should be formulated in words, and not rest in some supposed general purpose. *The Board is purely a creature of statute, deriving both its existence and powers therefrom,* just as municipal corporations do; and the incidental powers "must be necessary, not merely convenient, and the intention of the Legislature must be free from doubt. Dillon on Municipal Corporations (3d Ed.) Sec. 89; *Minturn* v. *Larne,* 23 How. 435, 16 L. Ed. 574; *City of Ottowa* v. *Carey,* 108 U. S. 110, 124, 2 Sup. Ct. 361, 27 L. Ed. 669". (*People ex rel. City of Olean* v. *Western New York & Pennsylvania Traction Co.,* 214 526, 108 N. E. 847, 848). See also the cases cited on p. 55, *supra.*

There is no power granted in Sec. 831, (Appendix, p. 103, *infra*), that cannot be carried into effect unless the Board also has the power to enforce through its receivers the liability of shareholders to creditors. It could exercise every power granted and perform every duty imposed by the entire act *even if the liability to shareholders did not exist.*

And the same thing is true so far as Sec. 961, (p. 16, *supra*), is concerned. In most states there is no stockholders' liability to creditors of ordinary corporations.

And yet when these corporations become insolvent receivers appointed by the courts take possession of the corporate books, property and assets, and, under the control of the courts, collect all debts, dues, and claims belonging to the corporations, sell or compound bad or doubtful debts, dispose of real and personal property, and distribute the proceeds among persons holding claims against the *insolvents*. Moreover, as we have heretofore seen (pp. 47-49, *supra*) many states impose a double liability to creditors upon stockholders of banking associations and other corporations of like character. Yet when these associations become insolvent complete liquidation of their assets is accomplished by receivers, despite the fact that not even courts of equity can empower them to enforce stockholders' liability to creditors.

The entire Act may be examined section by section, and line by line, without the discovery of even one duty or power to which the power of the Board or its receivers to enforce shareholders' liability is necessary or requisite.

This is not surprising, because:

1. The creation of shareholders' liability to creditors without more, necessarily left the right to enforce the said liability in *creditors*.

Formerly the National Bank Act made no express provision for the enforcement of stockholders' liability to creditors in cases of *voluntary* liquidation. In

Richmond v. *Irons*, 121 U. S. 27, 48,

this Court said:

> *"It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of*

voluntary liquidation, left the creditors of such association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. Section 5151 imposes upon the shareholders of every national banking association an individual responsibility for all its contracts, debts, and engagements, and the terms in which the obligation is created are unconditional and unqualified, except that the liability shall be equal and ratable as among the shareholders.

As all the shareholders are bound in that way to all the creditors, any proceeding to enforce this liability must be such as from its nature would enable the court to ascertain for what the stockholders ought to be made liable, to whom, and in what proportion as respects each other. This can only be done by the methods and machinery of a court of equity."

See also:

Coleman v. *White*, 14 Wis. 700.

Where this liability is enforced by creditors in a court of equity, shareholders can be heard on the important question of the amount of their liability, if any, and in close proximity to where they live. These considerations doubtless moved the Congress to depart from the National Bank Act in the particulars heretofore mentioned when the Federal Farm Loan Act was devised.

2. The Board's powers in respect of the liquidation of insolvent banks and associations, as well as the powers of receivers, were specifically enumerated and defined (pp. 46-52, *supra*). The power to enforce shareholders' liability to creditors was not granted either to the Board, or to the receivers appointed by it; consequently the power was prohibited.

Walla Walla v. *Walla Walla Water Power Co.*, 172 U. S. 1, 22, 19 S. Ct. 77, 43 L. ed. 350.

Case v. *Kelly*, 133 U. S. 21, 26, 10 S. Ct. 216, 33 L. ed. 515.

Sturges v. *Collector,* 12 Wall. 19, 27, 20 L. ed. 257.

United States v. *Arredondo,* 6 Pet. 691, 725, 8 L. ed. 560.

Arthur v. *Cumming,* 91 U. S. 362, 364, 23 L. ed. 439.

In re Johnson, 224 Fed. 180.

Ladew v. *Tennessee Copper Co.,* 179 Fed. 245, 250.

Washington Home for Incurables v. *American Security, etc., Co.,* 224 U. S. 486, 32 S. Ct., 554, 56 L. ed. 854.

Durrousseau v. *United States,* 6 Cranch 307, 314, 3 L. ed. 234, 2 Cond. Rep. 380, 382.

National Exch. Bank v. *Peters,* 144 U. S. 570, 572-3, 12 S. Ct. 767, 36 L. ed. 546.

In re Heath, 144 U. S. 92, 93, 12 S. Ct. 615, 36 L. ed. 359.

3. "Certainly an incidental power can avail neither to create powers which, expressly or by reasonable implication, are withheld nor to enlarge powers given; but only to carry into effect those which are granted."

First National Bank v. *Missouri,* 263 U. S. 640, 649.

The *litera legis* is decisive of this case. The Act nowhere gives to the Board, or to its receivers, the right to enforce the claims of creditors against shareholders. The history and the express provisions of the Act unmistakably evidence the intention of the Congress that neither the Board, nor its receivers, shall have that right. And now let us notice—

THE PRINCIPLES OF LOGICAL INTERPRETATION.

"Logical interpretation," says Salmond, "is that which departs from the letter of the law, and seeks elsewhere for some other and more satisfactory evidence of the true intention of the legislature."

Salmond states that there are two exceptions to the general principle that the *litera legis* alone governs.

> "There are two cases in which the *litera legis* need not be taken as conclusive, and in which the *sententia legis* may be sought from other indications. The first of these cases is that in which the letter of the law is *logically defective*, that is to say, when it fails to express some single, definite, coherent, and complete idea.
>
> "The logical defects by which the *litera legis* may be affected are three in number.
>
> "The first is ambiguity; for a statute, instead of meaning one thing, may mean two or more different things. In such case it is the right and duty of the courts to go behind the letter of the law, and to ascertain from other sources, as best they can, the true intention which has thus failed to attain perfect expression. * * *
>
> A second logical defect of statutory expression is inconsistency. A law, instead of having more meanings than one, may have none at all, the different parts of it being repugnant, so as to destroy each other's significance. In this case it is the duty of the judicature to ascertain in some other way the true *sententia legis*, and to correct the letter of the law accordingly.
>
> Lastly, the law may be logically defective by reason of its incompleteness. The text, though neither ambiguous nor inconsistent, may contain some *lacuna* which prevents it from expressing any logically complete idea. For example, where there are two alternative cases, the law may make provision for one of them, and remain silent as to the other.

> Such omissions the courts may lawfully supply b way of logical interpretation. It is to be noted however, that the omission must be such as to mak the statute logically incomplete. It is not enoug that the legislature meant more than it said, an failed to express its whole mind. If what it ha said is logically complete—giving expression to single, intelligible, and complete idea—the court have no lawful concern with anything else that th legislature may have meant but not said. Their dut is to apply the letter of the law, therefore they ma alter or add to it so far as is necessary to make it application possible, but they must do nothin more."
>
> (Jurisprudence, 6th ed. pp. 138-9)

There is no *logical* defect in the letter of the Act There is neither ambiguity, nor inconsistency, nor in completeness. The failure to give the Board or its re ceivers power to enforce shareholders' liability does no create a *lacuna* that prevents the act from expressing *logically complete idea.* This, for the reason that th shareholders' liability may be enforced by *creditor themselves.* (Pages 47-49, 60, *supra.*)

The ideas—*the logically complete ideas*—which th Act expresses are, *inter alia,* these:

1. That whenever a joint-stock land bank de faults the Federal Farm Loan Board may appoint receiver, who under the direction and control of th Board, or on the order of a court of competent juris diction, may convert into cash all the property an assets of the said *bank* and pay over the proceeds t the Treasury subject to the order of the Board.

2. That the shareholders of a joint-stock lan bank shall be severally liable, equally and ratably to *creditors* on all the bank's contracts, debts an engagements to a specified extent, and that, o course, the creditors alone may enforce the liabilit of shareholders.

The mere creation of the liability without more gives the creditors, as a matter of law, the right to enforce that liability. If it were necessary not only to create the liability, *but to expressly empower some one to enforce it,* then it might be contended that the Act was logically defective. Obviously, the mere failure to grant that power to the Board, or its receivers, is not a logical defect, since the creditors have that power. The Congress clearly intended that the Board should be responsible for reducing to cash *all the assets and liabilities of every insolvent bank,* and that if these proved insufficient to satisfy all claims, to leave—just as a great many state statutes and constitutions have left—to the creditors themselves the enforcement of statutory claims against *shareholders.* (Pages 47-9, 60, *supra.*) *These claims are no part of the assets of an insolvent bank.*

The second exception is stated by Salmond thus:

> "It has been already said that there are two cases in which logical interpretation is entitled to supersede grammatical. The first of these, namely, that of some logical defect in the *litera legis,* has been considered. The second is that in which the text leads to a result so unreasonable that it is self-evident that the legislature could not have meant what it has said. For example, there may be some obvious clerical error in the text, such as a reference to a section by the wrong number, or the omission of a negative in some passage in which it is clearly required.
>
> In considering the logical defects of the *litera legis,* we have tacitly assumed that by going behind the defective text it is always possible to discover a logically perfect *sententia legis.* We have assumed that the whole duty of the courts is to ascertain the true and perfect intention which has received imperfect expression. This is not so, however. In a great number of cases the defects of the *litera legis* are simply the manifestation of corre-

sponding defects in the *sententia.* If the legislature speaks ambiguously, it is often because there is no single and definite meaning to be expressed. If the words of the legislature are self-contradictory, it is possibly due to some repugnancy and confusion in the intention itself. If the text contains omissions which make it logically imperfect, the reason is more often that the case in question has not occurred to the mind of the legislature, than that there exists with respect to it a real intention which by inadvertence has not been expressed.

What, then, is the rule of interpretation in such cases? May the courts correct and supplement the defective *sententia legis,* as well as the defective *litera legis?* The answer is that they may and must. If the letter of the law is logically defective, it must be made logically perfect, and it makes no difference in this respect whether the defect does or does not correspond to one in the *sententia legis* itself. Where there is a genuine and perfect intention lying behind the defective text, the courts must ascertain and give effect to it; where there is none, they must ascertain and give effect to the intention which the legislature presumably would have had, if the ambiguity, inconsistency, or omission had been called to mind. This may be regarded as the *dormant* or *latent* intention of the legislature, and it is this which must be sought for as a substitute in the absence of any real and conscious intention.

In the case of the *sententia,* as formerly in that of the *litera legis,* it is to be noticed that the only defects which the courts may remedy are logical defects. That the intention of the legislature is ethically defective, is not a fact with which the judicature has any concern. The *sententia legis* might have been wiser, juster, or more expedient, had it been wider, or narrower, or other than it actually is. But the courts have no authority to detract from it, add to it, or alter it, on that account. It may be that had a certain case been brought to the notice of the legislature, the statute would have been extended to cover it; but so long as it is logically complete and workable without the inclusion of this case, it must

stand as it is. If a statute makes a provision as to sheep, which in common sense ought to have been extended to goats also, this is the affair of the legislature, not of the courts. To correct the *sententia legis* on logical grounds is a true process of interpretation. It fulfils the ultimate or dormant, if not the immediate or conscious intention of the legislature. But to correct it on ethical grounds is to assume and exercise legislative power." (pp. 139-41.)

If the foregoing is free judicial decision, the respondent is free to make the most of it. We quoted the foregoing excerpt only to show that the Circuit Court of Appeals has gone far beyond the very liberal rules stated by the distinguished jurist above mentioned. Its decision is condemned by the principles above stated, and finds no support in the enlightened views of the no less distinguished Judge Cardozo, who believes that courts should not "travel beyond the walls of the interstices, the bounds set to judicial innovation by precedent and custom." (The Nature of the Judicial Process, pp. 126-41.) The conclusion is irresistible that the court below assumed and exercised legislative power contrary to the Constitution, under even the most liberal view of the judicial function.

Since there is no *logical* defect in either the *litera legis*, or the *sententia legis*, the plain provisions of the Act must control. (Authorities, pp. 52, 63-66, *infra*.) A great many state statutes and constitutions impose a double liability on shareholders in favor of creditors without more. These statutes and constitutions are of long standing. It is almost universally held that only *creditors* may enforce this liability. The Congress has also imposed a double liability on shareholders of joint-stock land banks in favor of cred-

itors. It did not give the Federal Farm Loan Board, or its receivers power to enforce the liability of shareholders to creditors. Consequently it *prohibited* the Board and its receivers from exercising that power. The result is that only creditors can enforce the liability in question. Certainly it would be absurd to say that this result is so unreasonable that it is self-evident that the Congress could not have meant what it said, or that it did not say all that it intended to say.

THE ARGUMENT AB INCONVENIENTI.

Respondent's argument in the court below was largely an argument *ab inconvenienti*. It would be so much cheaper in time and money if the receiver could enforce shareholders' liability, etc. But, as has been said by this Court a great many times:

> "* * if the intention of the legislature be expressed in terms which are sufficiently intelligible to leave no doubt in the mind when the words are taken in their ordinary sense, it would be going a great way to say that a strained interpretation must be put upon them to avoid inconvenience which ought to have been contemplated in the legislature when the act was passed, and which, in their opinion, was probably overbalanced by the particular advantages it was calculated to produce." (*U. S.* v. *Fisher*, 2 Cranch. 358, 2 L. ed. 304, by Mr. Chief Justice Marshall, 1 Cond. Rep. 421, 425.)

> "It is better to submit to a temporary inconvenience than to set the laws all afloat by laying down a canon of construction which leaves the plain words and seeks to spell out, or guess at, the supposed intent of the legislature, contrary to or supplementary to that which is clearly embodied in the words it has used." *Merritt* v. *Welsh*, 104 U. S. 694, 702, 26 L. ed. 896, by Mr. Justice Bradley.

"When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of the court to execute it." *The Cherokee Tobacco*, 11 Wall. 616, 620, 26 L. ed. 896, by Mr. Justice Swayne.

The argument *ab inconvenienti* does not address itself to the court with much force where it amounts merely to an assertion that an act "is defective in some of its details, and does not reach all of the cases which ought to be provided for." *U. S.* v. *Dickson*, 15 Pet. 141, 164, 10 L. ed. 689.

Now let us notice the opinion of the Circuit Court of Appeals.

VI.

The Circuit Court of Appeals disregarded the plain language of the Act, and rested its judgment upon (a) the erroneous assumption that the purpose of the Act was to pay the debts of insolvent banks, and (b) a clause of the National Bank Act that was omitted from the Federal Farm Loan Act.

The Court quite correctly holds that the powers of the Board are not limited to those granted by section 831. (R. 15.) What apparently failed to impress the Court, however, was:

1. The fact that in the most detailed grant of powers made throughout the act,[8] the power to assess shareholders, or the power to authorize receivers to enforce shareholders' liability, was not even mentioned, much less expressly granted.

2. That the lack of power to assess shareholders and enforce shareholders' liability to creditors could in no way prevent the Board from either performing any duty imposed upon it or exercising any power expressly granted to it.

Without citing any provision that was ambiguous or in need of interpretation, the Court then states that "the meaning of the provisions of the Act must be gained not only from its words but also from its purposes" and quotes the title of the Act. (R. 15.) We have already dis-

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8. 12 U. S. C. A. §§ 641, 642, 651, 652, 653, 654, 656, 658, 659, 662, 663, 664, 672, 673, 675, 678, 681, 694, 695, 713, 714, 719, 721, 741, 743, 754, 755, 761 (3), 771 (2), 771 (4) (b), 771 (8) 771 (9), 771 (10), 781, 781 (4) (b), 781 (9), 801, 808, 817, 821, 822, 823, 831, 841, 842, 853, 856, 861, 862, 864, 872, 881, 882, 884, 893, 914, 951, 952, 953, 961, 962, 964, 965, 972, 991.

cussed the title and purposes of the Act (pp. 55-58, *supra*). The Court then concludes:

1. That the Congress intended that "during the organization and establishment of" the banks and associations provided for in said Act "and during their successful operation" they should be "under the supervision, direction and control of the Board". *We agree. It should be observed, however, that none of these matters rest in the "purposes" of the Act, apart from its language, but are expressly provided for in specific sections of the Act.*

2. That "it was anticipated that there would be cases of insolvency and failure"—*We agree—;* that "in such cases the Association or Bank would cease to function normally"—*Well, yes*—that "if creditors, probably widely scattered, were to be protected and debtors compelled to meet their obligations, some agency, other than the Bank or the Association, would have to intervene." (R. 15-16.)

Yes, with the reservation that the Act itself expressly provides to what extent creditors shall be protected, how their rights shall be enforced, the means by which the intervention shall be accomplished, the powers of the Board over insolvent banks and the powers and duties of receivers appointed by the Board.

3. That "it was one of the purposes of the Act to extend supervision of the Board so as to cover such cases is evidenced by the fact that it was authorized to find and declare insolvency and to appoint receivers." (R. 16.)

Yes, if by "such cases" is meant cases of "insolvency and failure." *But what are the Board's powers in such cases?* Moreover, that it was the intention of the Congress that the Board should not have the power to enforce shareholders' liability to creditors is evidenced by the fact that the Act created shareholders' liability to creditors, which, in the absence of a provision to the contrary, gave creditors the exclusive right to enforce it, and the fact that the Act nowhere gives the Board

power to enforce that liability, or to assess shareholders.

4. That "as one of the purposes of the Act, it was provided that, in addition to the capital stock and general assets, there should be an individual liability of stockholders, available for the debts in case of insolvency." (R. 16.)

We should not say that it was available *only* in the case of insolvency. But what if it were? *Available to whom?* The liability of stockholders is not an asset of the bank. It should not be loosely grouped with "capital stock and general assets." Power of the Board to assess stockholders and the Receiver's power to enforce creditors' rights can not be obtained merely by saying that the Board has supervision of insolvent banks and that in addition to capital stock and general assets the Act provides that there shall "be an individual liability of stockholders for the debts in case of insolvency."

The Court then refers to section 651, (of 12 U. S. C. A.), which provides that there shall be established in the Department of the Treasury a bureau (the Federal Farm Bureau) "charged with the execution of this chapter", "under the general supervision of" the Federal Farm Loan Board (Rec. 16). It then says:

"To 'execute' means: 'to follow out into effect' (Oxford Dict.); 'to carry through so as to effect, pursue to the end, accomplish, finish, put into force' (Standard Dict.). (Rec. 16)

Observe, please, by what means the court then obtains the power to assess shareholders. After the preliminaries above noted, it begins thus: (Italics ours)

"*If* one of the purposes of the Act is to carry insolvent concerns through liquidation and *pay their debts*, then 'execution canot be complete until that purpose has been accomplished. • • •

Speaking of the Federal Farm Loan Act, Section 641 provides: 'Its administration shall be under the

direction and control of' the Board. 'Administration' means the act of administering, especially direction or oversight of any office, service or employment, etc., management of public affairs. 'Direction and control' import authority to command what shall be done, and to require obedience to those commands. It is to be noted that it is not only solvent and going concerns that are placed under the supervision, direction and control of the Board, but the whole Act is to be executed and administered under the supervision, direction and control of the Board. These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes of the act, one of which *is* to *pay the debts of insolvent concerns.* (*Cook County Nat. Bk.* v. *U. S.* 107 U. S. 445, 448.)" (R. 16).

What was *adumbrated* at first, and *conditionally* stated later, flowers finally into *positive* assertion:

Purposes of Act; Board's power over organization and successful operation of banks; Board's power over insolvent banks; provision that in addition to "capital stock and general assets" there should be individual liability of stockholders available to pay debts in case of insolvency; IF purpose to *pay debts, then Board must accomplish purpose; Board to administer* Act, *and then:*

"These provisions can only mean that there is the right in the Board to exercise those powers until the full accomplishment of the purposes, one of which *IS to pay the debts of insolvent concerns.*"

The Court has simply disregarded the plain language of the various sections of the Act, and while professing to ascertain its purposes, (*apart from relevant sections!*), has read into it the product of its own inner-consciousness.

It is the purpose of the Act that an insolvent bank's *assets* shall be devoted to the payment of its creditors,

because the *Act* makes express provision therefor. The *Act* also provides just what the Board may and may not do in the premises. There is no need to search for the "purposes" of the Act, apart from its plain language in order to arrive at *that* conclusion. But it is *not* the purpose of the Act *to pay the debts of an insolvent bank.* It is *not* the purpose of the Act that the Board shall assess stockholders, or that it shall have power to authorize its receiver to enforce shareholders' liability to *creditors.* If it was the intention of the Congress that the Board and its receivers should have this power "it would have been easy to say so." The use of the National Bank Act, as a model right down to the very clause that would have granted the power in question, and the deliberate omission of that very vital provision, despite all the amendments, conferences, debates, etc., demonstrate that the Congress purposely withheld the power.

Obviously, there is the widest difference between a purpose to *pay the debts* of an insolvent bank, and the policy that an insolvent bank's *assets* shall be converted into cash under the direction of the Board, or of a court of competent jurisdiction, and paid into the Treasury subject to the order of the Board. The liability of shareholders to creditors is not *per se* a part of a bank's assets, neither is it made so by the act. The Board can *execute* and *administer* the act and *supervise, regulate,* and *control* the *organization and establishment of banks and associations, and the conduct of their business,* and *appoint receivers for them,* and, when they are insolvent, *collect their debts and sell their property,*—it can do all these things *by virtue of specific sections of the Act expressly conferring the power to do so, and not by virtue of some supposed purpose of the Act apart from its plain language.* The Board cannot, however, enforce

shareholders' liability to creditors. That liability is no part of a bank's assets. The enforcement of it by the Board was *prohibited* by the Congress because (a) the Board was not granted the power to enforce it, (b) the right to enforce it was granted to creditors, (c) the power to enforce shareholders' liability to creditors is not necessary or requisite to the performance of any duties that were imposed upon, or the exercise of any power that was granted to, the Board.

Section 651, which provides for the creation of the Federal Farm Bureau in the Department of the Treasury "charged with the execution of this chapter" under the "general supervision of" the Federal Farm Loan Board, merely hooks up the Farm Loan Board with an existing department of Government.

It has never heretofore been supposed that a provision that an act shall be *executed* by the executive officers of Government gave them the power to do as they pleased. The very provision that *the Act* shall be executed by them is both a franchise and a restraint. And so is the provision of § 641 that the act shall be "administered" under the direction and control of the Federal Farm Loan Board. The *Act* defines the ambit of the Board's power. It does not give them *carte blanche* (pp. 46-52, *supra*). For instance, some of the avowed purposes of the act are to "furnish a market for United States bonds, to create Government depositaries and financial agents for the United States." And yet the Board cannot forgive the Allied debt, however beneficial that might be to the people of the United States, nor coerce the purchase of United States bonds by the general public. The *Act* must be looked to. Whence comes the power of the Board to enforce the rights of creditors? Certainly, not from the *Act*.

In

United States v. *Standard Brewery*, 251 U. S. 210, 217, 64 L. ed. 229, 40 S. Ct. 139

this Court said:

> "As to the insistence that the Internal Revenue Department has determined that a beverage containing one-half of one per cent. of alcohol should be regarded as intoxicating within the intendment of the act before us little need be said. *Nothing in the act remits the determination of that question to the decision of the revenue officers of the Government.* While entitled to respect, as such decisions are, *they cannot enlarge the meaning of a statute enacted by Congress. Administrative ruling cannot add to the terms of an act of Congress and make conduct criminal which such laws leave untouched. Waite* v. *Macy*, 246 U. S. 606; *United States* v. *George*, 228 U. S. 14, 20; *United States* v. *United Verde Copper Co.*, 196 U. S. 207, 215."

The case of

Cook County National Bank v. *United States*, 107 U. S. 445, 448,

has no bearing on the case at bar. That case arose under the National Bank Act. Of course that act provided everything

> "essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects."

It did this, not by reason of the *purposes* of the Act, apart from its language, but by means of an *express* provision that the receiver appointed by the Comptroller might, under the latter's direction and control, *enforce the individual liability of stockholders* (p. 450).

The Court then repeats that

> "Appellee's argument that the Board is without power to make such assessments is based *wholly*

upon the assumption that its powers are only those found in Section 831, and that the provisions in paragraphs (i) and (j) of that section do not relate to any other supervision than that incidental to the powers enumerated in that section." (R. 16-17).

This, we think, is an exceedingly narrow interpretation of appellee's brief in the lower court. After demolishing that man of straw the Court continues thus:

"Under the National Banking Act, called Banking Act, there is no specific provision for the making of an assessment. The matter was before the Supreme Court in 1869 in *Kennedy* v. *Gibson*, 8 Wall. 498, and the right was upheld." (R. 17).

That act then provided, just as it now provides, that the receiver appointed by the comptroller might,

"if necessary to pay the debts of such association, enforce the individual liability provided by the 12th Section of this Act"—viz: the individual liability of stockholders (p. 499).

Of course, if the receiver, under the direction of the comptroller, could enforce the individual liability of stockholders, the comptroller had the incidental power to determine the amount that would be needed to pay the debts of an insolvent association and prorate that amount among the different stockholders. *That is why the comptroller had power to assess stockholders.* It was a mere incident to the exercise of a power expressly conferred by the National Bank Act. The case has absolutely no application to the facts in the case at bar.

Let us now take up that part of the court's opinion that treats of the power of the Board to authorize the receiver to enforce shareholders' liability.

The reasoning of the Court is interesting. The Court first refers to the failure of the Congress to include in the Federal Farm Loan Act a significant clause of a section of the National Bank Act that undeniably was used as a guide when the section of the Federal Farm Loan Act that treats of the powers of the Board and its receivers, was drafted. (R. 18-19.) That clause is as follows:

> "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders."

The Court admits that "the omission standing alone may indicate an intention to withhold from receivers" appointed by the Federal Farm Loan Board the right to enforce shareholders' liability to creditors; also that

> "if we found no other provision authorizing the Board to direct such actions, appellee's contention would prevail." (R. 19.)

Ordinarily, one would expect that a provision of the Federal Farm Loan Act so authorizing the Board would be quoted, or at least cited. But no, the Court leaves so solid and concrete a matter, and searches for the grant of power, not in the provisions of the Act, but in its purposes! (R. 19.) The court below apparently believed that its action was warranted by a decision of this Court:

> "While a court may not read into a statute language or purposes not there found, yet if that common-sense rule laid down in *U. S.* v. *Katz*, 271 U.S. 354, is to control, such interpretation must be given to the words employed, if it can be reasonably done, as will enable the instrumentality employed (in this case the Board) to effectively accomplish all the purposes of the statute." (R. 19.)

The fundamental difference between *United States* v. *Katz* and the case at bar is, that, whereas, this Court *had* a *particular section* of a statute to construe in the light of the purposes of the statute as gathered from *other specific sections,* the Circuit Court of Appeals had *no like section* to construe. It was obliged to create a grant of power out of whole cloth. It was compelled to find the power in the putative purposes of the Act, *wholly apart from any provision that could possibly confer the power.* As heretofore pointed out, it is *not* the purpose of the Act *to pay the debts* of insolvent banks (pp. 73-75, *supra*).

The Court then proceeds on its quest as follows:

> "There are many differences between the provisions relating to the powers of the Comptroller, found in the Banking Act, and those in the Farm Loan Act relating to the powers of the Board. The Banking Act adopted the method of enumerating the powers of the Comptroller, and although it has been held that he has incidental implied powers, for instance, the power to fix and direct the payment of the individual liability of stockholders (*Casey* v. *Galli,* 94 U. S. 673, 681), we do not find in the Banking Act any provision like that in Section 641, namely 'its administration shall be under the direction and control of the Board,' or like the provisions of Section 831 (i) and (j), set out above. We find some powers expressly given the Comptroller that are not so expressly given to the Board." (R. 19).

Didn't the Federal Farm Loan Act also "adopt the method of *enumerating* the powers" of the Board? (Sections cited in footnote, p. 70, *supra.*) And, of course, it is needless to point out again that the Comptroller can "fix and direct the payment of the individual liability of stockholders" simply because the National

Bank Act *expressly* provides that under the direction of the Comptroller the receiver may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.

The following section of the United States Code, Title 12, ("Banks and Banking"), demonstrates that the Court is in error when it impliedly asserts that there is no provision in "the Banking Act" "like that in Section 641" of the Federal Farm Loan Act.

> SECTION 1. *Bureau of Comptroller of the Currency.* There shall be in the Department of the Treasury a bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury. (R. S. § 324; Dec. 23, 1913, c. 6, § 10, 38 Stat. 261.)

This section derives from the Act of June 3, 1864, which laid the foundation of our National Banking System. (See 13 U. S. Stats. at Large, p. 99, § 1.)

In the one case, the Federal Farm Loan *Bureau,* a department of the Treasury, is charged with the execution of the Federal Farm Loan Act under the general supervision of the Federal Farm Loan *Board* (12 U. S. C. A. § 651)—or as expressed in § 641, the administration of the Act shall be under "the direction and control of the Federal Farm Loan Board," which is only another way of saying the same thing.

In the other case, another bureau attached to the Treasury "the chief officer of which bureau" is the

Comptroller, is charged with the execution of the National Bank Act, etc., under the general direction of the Secretary of the Treasury.

The authority of both these bureaus, and of the Board, and of the Comptroller must be found in the Acts which they are executing or administering.

We have already pointed out that Section 831 merely gives the Board power to regulate and supervise banks and associations formed under the Act; that the enforcement of shareholders' liability to creditors is not necessary or requisite to the exercise of this power, and that subsection (j) of section 831 adds nothing to the powers of the Board.

We think that the Court is correct in its conclusion that the omission from the Federal Farm Loan Act of the provisions of sections 192 and 194 of the National Bank Act is not important except in the particular discussed on pp. 86-91, *infra*. (R. 19-20.) The Board is given the express power to convert an insolvent bank's *assets* into cash and pay the proceeds into the Treasury subject to its order. Obviously, the money must be distributed among the persons entitled to it. The Board, or the Federal Farm Loan Bureau, or the Treasury department would, therefore, have the *incidental* power to require all persons having claims against the *bank* to file them, etc. Claimants would hardly get their money if they did *not* file claims; and it has been our experience that it is much easier to pay money to Government bureaus than it is to get money from them. Yes, claims, and amended claims, and explanations of claims, and affidavits, and inquiries concerning claims would be filed. There can be no doubt that this power of the Board would be exercised without an ex-

press grant of it. But the liability of shareholders to *creditors* is not a *corporate* asset. Neither is the power to enforce that liability necessary or requisite to the power to convert the *bank's* assets into cash and distribute the proceeds among persons having claims against the *bank*, or to any other power expressly granted to the Board or the receivers appointed by it.

The Court then states:

> "We find no purpose in the Farm Loan Act to give to the Board narrower powers than those given the Comptroller under the Banking Act. On the contrary, in Section 961 is found a provision broadening the Board's powers. It gives to the Board and the court control over certain acts that are by Section 192 of the Banking Act wholly under the control of the court." (R. 20.)

No purpose if we disregard the language of the Act, no. *But why wasn't the power granted?* Or, rather, where is the provision that grants it? And speaking of purpose, does the discrimination exercised by Congress, which is plainly manifested by the exclusion of this provision, the inclusion of that one, the fabrication of new provisions, and the combination of all of them into a lucid, harmonious whole, speak nothing of purpose? Is the rule, that not to grant is to prohibit, silent on that subject?

The Court then returns to

Kennedy v. *Gilson*, 8 Wall. 498, 505.

It quotes from the opinion in that case—

> "The receiver is the instrument of the comptroller. He is appointed by the comptroller, and the power of appointment carries with it the power of removal. It is for the comptroller to decide when it is necessary to institute proceedings against the

> stockholders to enforce their personal liability, and whether the whole or a part, and if only a part, how much, shall be collected. These questions are referred to his judgment and discretion, and his determination is conclusive. The stockholders cannot controvert it." (R. 20.)

and then makes the following assertion:

> "All of those things were true, regardless of the question as to whether the receiver was authorized by the act to bring a suit to establish the individual liability of the stockholders." (R. 20.)

On the contrary, they were true *because* that Act provided that under the direction and control of the Comptroller the receiver appointed by him might enforce stockholders' liability.

The Court then turns to

Richmond v. *Irons*, 121 U. S. 27, 48,

where it is said that in case of the involuntary liquidation of a National Bank the receiver appointed by the Comptroller was authorized and required to collect and apply the proper assets of the bank to the payment of its debts **and** TO ENFORCE THE INDIVIDUAL LIABILITY OF SHAREHOLDERS. This Court in that case said:

> "It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least so closely connected with it as to constitute but one continuous transaction.
>
> "* * * The *two* subjects of applying the assets of the bank and enforcing the liability of the stockholders, *however otherwise distinct*, are *by the statute* made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank."

The case distinguishes itself. The National Bank Act expressly provided that *these two distinct matters*—the

application of a bank's assets *and* the enforcement of stockholders' liability—*should be brought together.* It provided that under the direction and control of the Comptroller the receiver might

> "if necessary to pay the debts of such association, enforce the individual liability" of the stockholders.

From the foregoing premises, all of which we have endeavored to faithfully report, the Court below reaches the following conclusion:

> "We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board, and that the language in *Casey* v. *Galli,* 94 U. S. 673, 681, applies:
>
> 'It is sufficient * * * that the comptroller has ordered that each stockholder shall pay to the receiver the par of his stock. This order cannot be controverted in a suit against the stockholder. It is conclusive upon him, and makes it his duty to pay. (Citing *Kennedy* v. *Gibson,* 8 Wall. 498.)'
>
> We are of opinion that the Board had the right to make the assessment and direct the receiver to bring this suit." (R. 22.)

Means of liquidating the debts of insolvent concerns, yes! But not of enforcing the liability of shareholders to creditors by receivers.

Of course, *Casey* v. *Galli,* 94 U. S. 673, arose under the National Bank Act. The order of the Comptroller could not be controverted in that case because that act expressly empowered the Comptroller to authorize receivers appointed by him to enforce the liability of stockholders.

We respectfully submit that besides the fallacies above pointed out, the opinion in the case at bar also contains the following antinomy: It finds that the omission from the Federal Farm Loan Act of the clause

> "and may, if necessary to pay the debts of such association, enforce the individual liability" of the stockholders

is not conclusive against the power of the receiver to maintain this suit, and then bases the conclusion that the power exists upon cases arising under the National Bank Act—*or upon the very clause in question!*

It is undeniable that the court below exercised legislative power contrary to the Constitution. The Federal Farm Loan Act is plain, and there is no need of interpretation.

VII.

The fact that the Federal Farm Loan Act fails to grant to the Federal Farm Loan Board, not only the power to assess shareholders, but the power to direct its receivers to enforce shareholders' liability to creditors, conclusively proves that the Congress deliberately departed from the National Bank Act.

The foregoing fact, and the fact that creditors may enforce shareholders' liability in a court of equity, evidence the intention of the Congress that shareholders' liability to creditors, if any, should be determined by a court of equity in the district in which the insolvent bank was located, where shareholders could be heard in respect of all matters affecting them, and not by the fiat of a board in Washington without a day in court or other opportunity to be heard.

In respondent's brief in opposition to the petition in this Court, it is asserted that express power to assess shareholders is unnecessary. (Brief, p. 17 *et seq.*) It is there asserted that the power to assess may be implied, and reliance is placed upon *Kennedy* v. *Gibson,* 8 Wall. 498, *Casey* v. *Galli,* 94 U. S. 673, and other cases that arose under the National Bank Act.

It is needless to point out again that the power to assess was there "implied" *because the said act expressly provided that the Comptroller might direct the receivers appointed by him to enforce stockholders' liability.* (Pages 78-85, *supra.*)

The Federal Farm Loan Act fails to grant that all-important power. Consequently, the warrant in the

cases above mentioned for "implying" the power to assess does not exist in the case at bar.

We have already shown that there is no power granted to, nor duty imposed upon, the Federal Farm Loan Board to which the power to enforce shareholders' liability to creditors is necessary or requisite. (Pages 53-62, *supra.*) The same argument applies to the power to assess shareholders.

We have already seen that the mere creation of shareholders' liability to creditors, without more, gives to creditors the right to enforce shareholders' liability in a court of equity. (Pages 47-49, 60-61, *supra.*)

The foregoing facts, and the fact that the National Bank Act was used as a guide, except where changes were made "to overcome difficulties which had theretofore been shown to attach to the national banking plan," (p. 13, *supra*), clearly manifest an intention on the part of the Congress that shareholders should have their day in court in the important matter of their liability, and that the amount thereof should be fixed by a court of equity.

The plan of the Act as a whole is simply this: Joint-stock land banks shall at all times be under the supervision and control of the Federal Farm Loan Board. (It was apparently hoped that this would prevent irregular practices and large losses.) Upon default of any obligation the Board may appoint a receiver, who, under the control of the Board, or of a court of competent jurisdiction, may convert the *bank's* property and assets into cash and pay the proceeds into the Treasury, subject to the order of the Board. Shareholders' liability to creditors is not a *corporate* asset; and, of course, no creditor

would sue a shareholder if paid the amount of his claim by the Board. If the bank's assets prove to be insufficient, then creditors may enforce shareholders' liability in a court of equity, where the shareholders can be heard in respect of all matters that affect them.

Richmond v. *Irons*, 121 U. S. 27, 48.

United States v. *Knox*, 102 U. S. 422, 425.

Cheney v. *Scharmann*, 129 N. Y. S. 993.

If the Congress had intended that the amount of the liability of shareholders to creditors should be determined by the Board, "it would have been easy to say so." First, by *expressly granting the Board the power to determine the aforesaid amount*, or, second, *by expressly authorizing the Board to empower its receivers to enforce shareholders' liability*. Neither the direct, nor the indirect method was adopted. And respondent simply asks this Court to nullify the rule that *silence is prohibition*, and the rule concerning incidental powers, (pp. 42, 49, *supra*), when he asks that the essential powers involved be granted by means of the construction of an act that is so plain that construction has no office to perform.

The differences between the National Bank Act and the Federal Farm Loan Act are both numerous and striking. Let us notice only a few of them.

The former expressly confers power upon the Comptroller to enforce stockholders' liability to creditors, whereas the latter confers no like power upon the Federal Farm Loan Board.

The former confers the incidental power upon the Comptroller to assess stockholders, whereas the latter

confers no like power upon the Federal Farm Loan Board, either expressly or otherwise.

The former expressly empowers the Comptroller to direct persons having claims against an insolvent bank to present them and make legal proof thereof (12 U. S. C. A. § 193), whereas the latter contains no parallel provision.

The former expressly provides for the payment of dividends by receivers appointed by the Comptroller, and the distribution of the residue, if any, among stockholders (12 U. S. C. A. §§ 194, 197), whereas the latter contains no like provisions.

Why these differences? If ever the teleological argument is sound, it certainly is sound and applicable here. Before granting all these powers by means of an unconstitutional exercise of legislative power, it seems to us that the court below might well have endeavored to discover whether any reasons could be assigned for the differences between the two Acts. Clearly they are the result of design rather than accident.

National Banks, unlike the so-called banks organized pursuant to the Federal Farm Loan Act, issue their obligations which circulate as money, and are guaranteed by the United States. These obligations probably aggregate billions of dollars. It is essential, therefore, that the Treasury have absolute power to deal effectively with any national bank and its stockholders in case of insolvency. Otherwise the whole complex and delicate structure of credit, which rests upon confidence, might be impaired to the irreparable injury to the entire world. Power to assess stockholders and to enforce their liability to creditors is clearly essential, and consequently was granted

to the Comptroller by the National Bank Act. The case is entirely different so far as joint-stock land banks, etc., are concerned. The necessity for drastic bureaucratic action does not exist, and for that reason, no doubt, the power to assess shareholders and to enforce their liability to creditors was not granted by the Congress to the Federal Farm Loan Board.

Furthermore, this is farm legislature, and farmers have very little, if any, experience in dealing with government bureaus. It is also undeniable that the great majority of mankind dislike to deal with them. Their experience with them has, on the whole, been far from satisfactory. These bureaus lack flexibility, and appear wooden, autocratic, and inhuman.

Courts of equity are entirely different. The people have not only more experience of them, but more confidence in them. Moreover, it is of great convenience to stockholders to have the affairs of an insolvent bank administered by a court in the district in which the bank had conducted its business, rather than in far-off Washington by some government bureau. The Congress evidently intended that they should be heard on the question of the necessity of any assessment, and if so the amount. Only creditors and shareholders are interested in these questions. The United States have no pecuniary interest; they are in nowise liable; the currency can in no way be affected.

These, and other obvious considerations too numerous to mention, account for the striking differences between the two acts above mentioned. One cannot imagine that a court of equity would levy an assessment of one hundred per cent in the case of a default where an assessment of five per cent would be ample.

Furthermore, where the amount of each shareholder's liability is determined by a court of equity, the validity of the alleged contracts, debts, etc., of the bank for which shareholders are liable, is also involved. On this important matter the shareholders can be heard. If officers or directors have been recreant, proof of it can be obtained, and their liability can thereafter be established.

At any rate, the Congress has acted, and it is not for the courts to substitute their notions or ideas for those of the Congress under the guise of judicial construction. (Pages 36, 39, 44-5, *supra*.)

VIII.

Section 37 of 12 U. S. C. A. has no application to Joint-Stock Land Banks, or to the Facts disclosed by the Record.

In the court below respondent relied upon section 37 of 12 U. S. C. A., which is as follows:

> "**§ 37. Associations governed by chapter.** The provisions of this chapter, which are expressed without restrictive words, as applying to 'national banking associations,' or to 'associations,' apply to all associations organized to carry on the business of banking under any Act of Congress."

The chapter referred to in section 37 is chapter 2, which deals exclusively with national banks.

Respondent argued that section 37 made section 192 of 12 U. S. C. A. (which provides that the Comptroller of the Currency may appoint and direct receivers of national banks) applicable to the Federal Farm Loan Act, and that consequently a receiver appointed by the Federal Farm Loan Board had all the powers of a receiver appointed by the Comptroller!

The absurdity of the argument is obvious.

1. If section 192 of 12 U. S. C. A. is applicable, then the Comptroller of the Currency would have the power to appoint a receiver of joint-stock land banks, despite the express provisions of the Federal Farm Loan Act that the Federal Farm Loan Board shall appoint receivers of insolvent joint-stock land banks, and that the Federal Farm Loan Bureau, not the Comptroller, shall execute the Act.

2. If we assume that the Comptroller of the Currency has the power to appoint receivers of joint-stock land banks, and that a receiver *so appointed* would have power to enforce shareholders' liability

to creditors, we shall get nowhere, since the undisputed fact is that *respondent* was not appointed by the Comptroller! *He expressly alleges that he was appointed by the Federal Farm Loan Board.* (R. 1.)

3. If respondent had been appointed by the Comptroller, the direction of the latter to enforce shareholders' liability would be essential. (*Kennedy* v. *Gibson*, 8 Wall. 498.) The respondent, however, does not claim that he was authorized to sue by the Comptroller. He predicates his right to sue solely upon the direction of the Federal Farm Loan Board. (R. 2.)

4. If section 192 is applicable, then the Comptroller of the Currency would simply have power to (a) appoint a receiver of joint-stock land banks, etc., and (b) direct him to enforce shareholders' liability to creditors.

The applicability of § 192 to joint-stock land banks, etc., formed under the Federal Farm Loan Act, could not give the Federal Farm Loan Board the powers enjoyed by the Comptroller of the Currency. This for the reason that the powers of the Board are defined by the Federal Farm Loan Act.

5. The issue in the case at bar is *the right of respondent to maintain this action.* His alleged right rests *solely upon the direction of the Federal Farm Loan Board to sue.* (Pages 8-10, *supra.*)

Section 192 does not treat of the power of *receivers* appointed by the Comptroller, but of the power of the *Comptroller to appoint and direct them.*

The same thing is true of § 961. It deals with the powers of the *Federal Farm Loan Board,* which is given power to appoint and direct receivers.

Therefore, if section 192 were applicable to joint-stock land banks by virtue of § 37 of 12 U. S. C. A., it would profit the *respondent* nothing. Why not? For the obvious reason, that in that case the Comptroller would merely have a power which he has never exercised, viz., *the power to appoint a receiver and direct him to sue,* or to *accept* the appointment of *respondent,* and direct him to sue.

It is clear that respondent's logic is bad, even if his premises were true. The conclusion that *he has the right to maintain this action*, cannot be logically deduced from the premises stated by him, even if we assume that they are true.

But his premises are false.

Section 37 of 12 U. S. C. A. derives from section 5157 of the Revised Statutes of 1873-74. Section 5157 is set forth in the margin.[9] When the Revised Statutes were enacted, there were then *at least three* acts under which national banks had, or could have, been organized. They were:

1. The Act of February 25, 1863, Ch. LVIII, 12 U. S. Stats. at L., p. 665.
2. The Act of June 3, 1864, Ch. CVI, 13 U. S. Stats. at L., p. 99.
3. The Act of July 12, 1870, Ch. CCLII, 16 U. S. Stats. at L., p. 251.

The Act last mentioned is expressly referred to in sections 5185-86 of the Revised Statutes.

Title LXII of the Revised Statutes treats of National Banks. Chapter one of that title is concerned with the organization and powers of "associations for carrying on the business of banking under this Title." The chapter in question is constituted of sections taken almost exclusively from the Act of June 3, 1864. And in this chapter banks are called indifferently "associations" and "national banking associations."

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9. "Sec. 5157. The provisions of chapters two, three, and four of this Title, which are expressed without restrictive words, as applying to 'national banking associations', or to "associations', apply to all associations organized to carry on the business of banking under any act of Congress."

In order to recognize banks that had been organized under other acts, there was included in chapter one of Title LXII of the Revised Statutes, the provision set forth in the margin.[10]

Section 5157 of the Revised Statutes (p. 94, *supra*) is in Chapter two of Title LXII. The following tabulation shows the subject matter of Chapters two, three and four of Title LXII:

"CHAPTER TWO.
OBTAINING AND ISSUING CIRCULATING NOTES."
(Sections 5157-89.)

"CHAPTER THREE.
REGULATION OF THE BANKING BUSINESS."
(Sections 5190-5219.)

"CHAPTER FOUR.
DISSOLUTION AND RECEIVERSHIP."
(Sections 5220-43.)

The reason for section 5157 is clear. And at that time there existed only national banks, or "associations organized to carry on the *business of banking.*" The wording of Section 5157 was perfectly proper *at that time.*

However, by the time the latest or current code was to be compiled, the Congress had authorized not only Fed-

10. "Sec. 5156. Nothing in this Title shall affect any appointments made, acts done, or proceedings had or commenced prior to the third day of June, eighteen hundred and sixty-four, in or toward the organization of any national banking association under the act of February twenty-five, eighteen hundred and sixty-three; but all associations which, on the third day of June, eighteen hundred and sixty-four, were organized or commenced to be organized under that act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this Title, notwithstanding all the steps prescribed by this Title for the organization of associations were not pursued, if such associations were duly organized under that act."

eral Reserve banks, but the so-called "banks" provided for in the Federal Farm Loan Act. The compilers of that Code followed the general language of section 5157 of the Revised Statutes, or rather they converted § 5157 of the Revised Statutes into § 37 of the U. S. C. Section 37 of 12 U. S. C. A. is set forth on p. 92, *supra*.

They also followed section 5156 of the Revised Statutes in the fabrication of section 39 of 12 U. S. C., which is set forth in the margin.[10]

Title 12 of U. S. C. A. is "Banks and Banking." The following tabulation taken from 12 U. S. C. A. shows the subject matter of the respective chapters of Title 12:

"CHAP. SEC.

1. The Comptroller of the Currency..... 1
2. National banks..... 21
3. Federal Reserve system..... 221
4. Taxation 531
5. Crimes and offenses..... 581
6. Foreign banking..... 601
7. **Federal farm loans**..... 641
8. Federal intermediate credit banks.....1021
9. National Agricultural Credit Corporations .....1151"

10. "§ 39. Reservation of rights of associations organized under Act of 1863. Nothing in this chapter shall affect any appointments made, acts done, or proceedings had or commenced prior to the 3d day of June, 1864, in or toward the organization of any national banking association under the Act of February 25, 1863; but all associations which, on the 3d day of June, 1864, were organized or commenced to be organized under that Act, shall enjoy all the rights and privileges granted, and be subject to all the duties, liabilities, and restrictions imposed by this chapter, notwithstanding all the steps prescribed by this chapter for the organization of associations were not pursued, if such associations were duly organized under that Act." (R. S. § 5156.)

We shall not burden the Court with an analysis of section 37 of 12 U. S. C. A. nor a compilation of the provisions of chapter two which might possibly be applicable to other "associations organized to carry on the business of banking under any Act of Congress." It is not necessary to do so, not only for the reasons heretofore stated, but for the following additional reasons:

1. Joint-stock land banks are not "associations organized to carry on the business of banking," within the meaning of section 37 of 12 U. S. C. A. This is particularly true in view of the history of the provision. It is also true by virtue of what joint-stock land banks may and may not do. (Sec. §§ 811-23 and 781-91 of 12 U. S. C. A.) Of course they might be made banks by definition, but we submit that they were not organized to carry on the business of banking. They have only a few of the powers of banks, but not the essential powers that distinguish banks from other business corporations. They do not conduct the "business of banking" neither were they organized for that purpose, nor *can* they carry on that business. They are not simply *banks*, but *land* banks. They were organized, not to carry on the business of banking, but to make *farm loans*, and to perform the other non-banking duties specified in the act. Even if they were called *banks* without qualification, the matter would not be different. Merely calling these agencies *banks* does not make them so, either in fact, or by definition, within the meaning of Section 37. There was some discussion of these matters in

Smith v. *Kansas City Title & Trust Co.*, 255 U. S. 180,

but the validity of the Federal Farm Loan Act was rested upon the power of the Congress to create and use these so-called "banks" as *agencies* of the Federal Government, and not upon their being banks.

2. The Federal Farm Loan Act is complete in itself. Joint-stock land banks not having been authorized to carry on the business of banking, the Federal Farm Loan Act varies at all points from the provisions of Chapter 2 of 12 U. S. C. A. Compare, if you will, these parallel sections taken from chapter 2 and the Federal Farm Loan Act:

Chapter two	Farm Loan Act
§ 24	§ 781, 791, 811-16
§ 51	§ 691, 815
§ 191-92	§ 831
§ 1 (Chap. 1)	§ 641, 651

We ask counsel for respondent to pick out the provisions of chapter two that are applicable to joint-stock land banks and state why they are applicable.

3. In any event, the provisions of chapter two "which are expressed without restrictive words" would be applicable to other banks only where the Congress had not expressly or by necessary implication otherwise provided. They are *general provisions* which *specific inconsistent provisions* in another act would render inapplicable. Compare, for instance, section 192 (p. 17, *supra*) with section 961 (p. 16, *supra*). The one provides that the Comptroller shall appoint a receiver in certain instances, the other that the Federal Farm Loan Board may appoint a receiver in *any* case of default. The one gives the Comptroller power to direct his receiver, the other gives the Federal Farm Loan Board power to direct its receiver. The one expressly provides that the Comptroller may direct his receiver to enforce stockholders' liability [illegible]reditors, whereas, the other just as plainly provides [illegible]he Federal Farm Loan Board shall *not* have the power to so direct its receiver. Which con-

trols? The provisions of the Federal Farm Loan Act, of course.

Townsend v. *Little*, 109 U. S. 504, 3 S. Ct. 357.

United States v. *Matthews*, 173 U. S. 381, 387, 19 S. Ct. 413, 43 L. ed. 740.

Cook County National Bank v. *United States*, 107 U. S. 445, 2 S. Ct. 561, 27 L. ed. 537.

Washington v. *Miller*, 235 U. S. 422, 35 S. Ct. 119, 59 L. ed. 295.

United States v. *Nix*, 189 U. S. 199, 23 S. Ct. 495, 47 L. ed. 775.

Hemmer v. *United States*, (C. C. A. 8th Cir.) 204 Fed. 898.

Partee v. *St. Louis & S. F. R. R. Co.*, (C. C. A. 8th Cir.) 204 Fed. 970.

Rodgers v. *United States*, 36 Ct. Cl. 266.

Mead v. *Bagnall*, 15 Wis. 156.

Compare § 1301 of 12 U. S. C. A. (p. 21, *supra*) with § 961. Why these differences?

The respondent will also doubtless cite the case of

Krauthoff v. *Kansas City Joint-Stock Land Bank of Kansas City*, 23 Fed. (2d.) 71.

The question in that case was whether the District Court had erred in refusing to oust a receiver appointed by the Federal Farm Loan Board. Manifestly that is not the question presented here. There are some dicta in the opinion in that case upon which the respondent will doubtless attempt to base the power claimed by him. We can understand why he should attempt to do so, since

neither the Federal Farm Loan Act, nor the opinion rendered by the court below will sustain the power in question. However, the dicta are so manifestly devoid of strength as to require no comment from us.

The other case bearing the same title—

Krauthoff v. *Kansas City Joint-Stock Land Bank,* 31 Fed. (2d) 75,

is also not in point for the reasons above stated. The dicta in that case are wholly without substantial foundation, since they rest upon the opinion rendered by the Circuit Court of Appeals in the case at bar.

Respondent also contended that petitioner was simply quibbling over a mere matter of *procedure.* Of course this contention is groundless. We assert that respondent neither owns, nor represents, the *cause of action* sought to be enforced. (Pages 8-9, *supra.*)

Moreover, it is of the greatest importance that payment shall not be made to *anyone* who has not the right to receive it. Otherwise the persons having that right will force the petitioner to pay again.

We ask that the judgment of the Circuit Court of Appeals be reversed.

Respectfully,

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APPENDIX.

"POWERS OF FEDERAL FARM LOAN BOARD GENERALLY.

Sec. 831. ENUMERATION. The Federal Farm Loan Board shall have power—

(a) Organizing and chartering banks and loan associations; authorizing increase of stock. To organize and charter Federal land banks, and to charter national farm loan associations and joint-stock land banks subject to the provisions of this chapter, and in its discretion to authorize them to increase their capital stock. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(b) Reviewing and altering interest rates. To review and alter at its discretion the rate of interest to be charged by Federal land banks for loans made by them under the provisions of this chapter, said rate to be uniform so far as practicable. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(c) Granting or refusing authority to issue bonds. To grant or refuse to Federal land banks, or joint-stock land banks, authority to make any specific issue of farm loan bonds. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(d) Making rules and regulations as to charges on loans. To make rules and regulations respecting the charges made to borrowers on loans under this chapter for expenses in appraisal, determination of title, and recording. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(e) Requiring reports, etc.; examining banks and associations. To require reports and statements of condition and to make examinations of all banks or associations doing business under the provisions of this chapter. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(f) Prescribing form and terms of bonds and surety bonds. To prescribe the form and terms of farm loan bonds, and the form, terms, and penal

sums of all surety bonds required under this chapter and of such other surety bonds as they shall deem necessary, such surety bonds to cover financial loss as well as faithful performance of duty. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(g) Regulating payments between banks. To require Federal land banks to pay forthwith to any Federal land bank their equitable proportion of any sums advanced by said land bank to pay the coupons of any other land bank, basing said required payments on the amount of farm loan bonds issued by each land bank and actually outstanding at the time of such requirement. (July 17, 1916, c. 245. Sec. 17, 39 Stat. 375.)

(h) Suspending or removal of directors, registrars, appraisers, and examiners. To suspend or to remove for cause any district director or any registrar, appraiser, examiner, or other official appointed by said board under authority of sections 651-664 of this chapter, the cause of such suspension or removal to be communicated forthwith in writing by the Federal Farm Loan Board to the person suspended or removed, and in case of a district director to the proper Federal land bank. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(i) Exercising supervisory authority over banks. To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375.)

(j) Incidental powers. To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this chapter. (July 17, 1916, c. 245, Sec. 17, 39 Stat. 375)."

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1928.

No. [redacted] 39.

J. R. WHEELER, Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

PETITIONER'S REPLY BRIEF.

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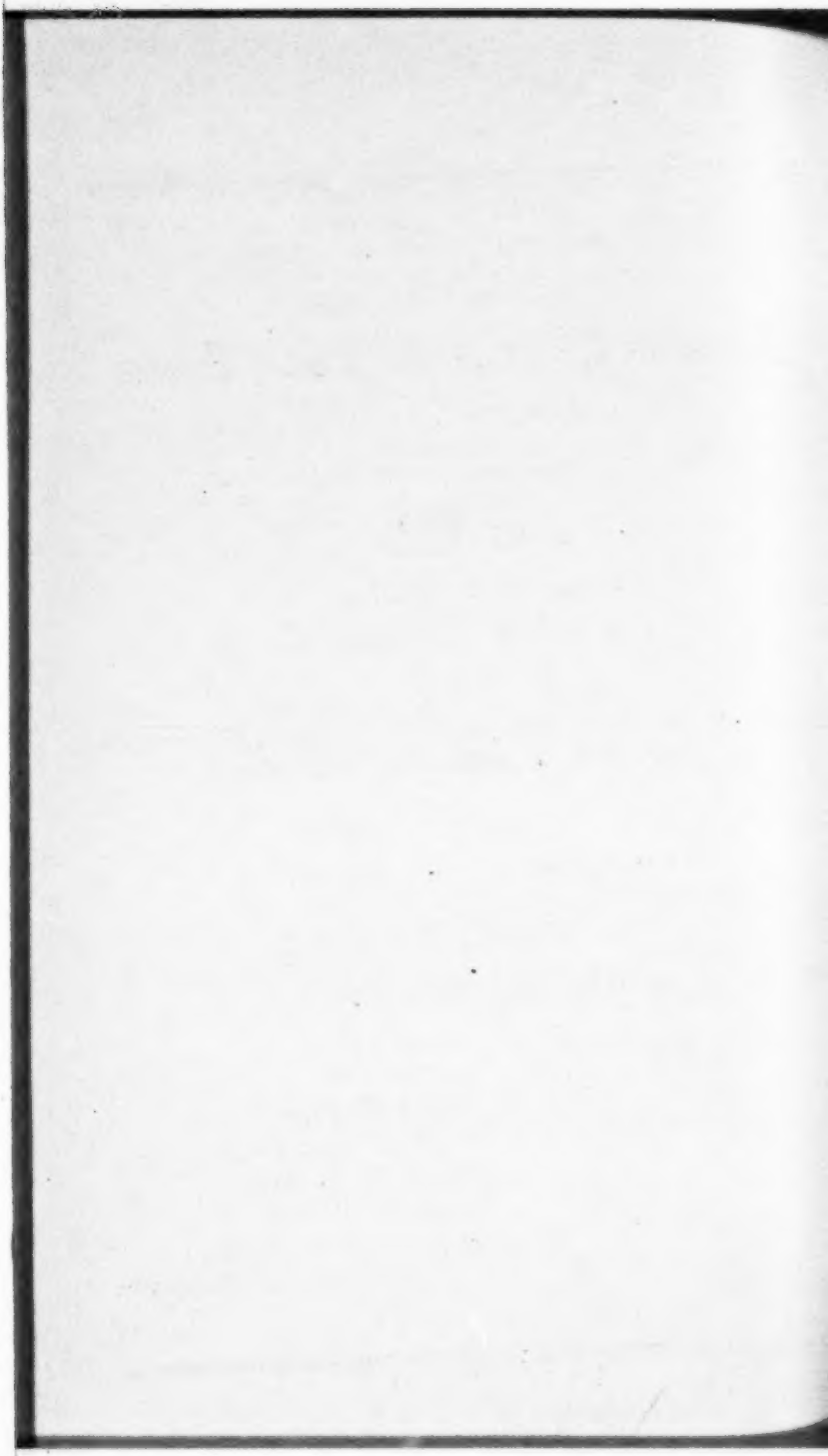

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IN THE

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ON CERTIORARI TO C. C. A. 7TH CIRCUIT.

PETITIONER'S REPLY BRIEF.

MAY IT PLEASE THE COURT:

The respondent asserts that

> "the *administrative* powers of the Farm Loan Board are so comprehensive as necessarily to include the assessment and collection of the stockholders' liability." (Points I and II, pp. 7-26.)

These "administrative powers," it is said, are granted the Federal Farm Loan Board by sections 641, 651, 831(i) and 831(j) of the United States Code. This argument, repeated over and over again, constitutes respondent's brief, with the exception of the argument *ab inconvenienti* and the argument based upon cases arising under the National Bank Act. Let us first notice section 641, which is set forth in the margin.[1]

1. "The Act of July 17, 1916 (chapter 245, section 1, Thirty-ninth Statutes, page 360), as amended by Act of March 4, 1923 (chapter 252, section 1), to include Federal intermediate credit banks may be cited as the 'Federal Farm Loan Act.' Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created." (Sec. 641.)

SECTION 641.

This section manifestly contemplates the *administration* of the Act, *not* by the Federal Farm Loan Board, but by *other persons.*

Obviously it means that the persons upon whom other sections cast the duty of *administering* the Act shall be under the direction and control of the Federal Farm Loan Board. We say this for the reason that it would be absurd to provide for the administration of the Act by the *Federal Farm Loan Board* under the direction and control of the *Federal Farm Loan Board.*

From the foregoing logical construction of section 641, important conclusions follow:

1. Since these persons are administering the **Act**, the act itself must be looked to in order to ascertain their powers and duties.

2. The only powers conferred upon the Federal Farm Loan Board by section 641 are purely *supervisory* powers. Under section 641 the aforesaid Board can merely direct and control the persons charged with the *administration* of the Act, *in the performance of the duties imposed, and the exercise of the powers conferred, upon such persons by the Act.*

3. All other powers of the Board—that is, *non-supervisory* powers—must be found in other sections of the Act, since only *supervisory* powers are granted by section 641.

The foregoing conclusions are implicit in the wording of section 641, and necessarily follow from the nature of administrative powers. Discussing the distinction be-

tween legislative power and *administrative* power, the Court in

Brazell v. *Zeigler*, 26 Okla. 826, 110 Pac. 1052, 1054-5,

said:

> "Tested by the rule that municipal legislation consists of prescribing by the lawmaking power of the municipality a rule of civil conduct, was the board in making the order making law or *was it administering or executing a law already made?* If it was making law it was exercising legislative function and the result of its act was municipal legislation. *If it was administering a law already made it was exercising administrative function,* and the result of its act not municipal legislation, *but administrative action;* for, as stated by Mr. McQuillan in his work on Municipal Ordinances, § 80, '*executive and administrative duties are such as concern the execution of existing laws.*' While no doubt, as stated in *Chaska Co.* v. *Super., etc.*, 6 Minn. 204 (Gil. 130), 'boards of county commissioners are public corporations, invested with subordinate legislative powers, to be exercised for local purposes connected with the public good (citing Comp. Stat. 153, § 6; 2 Kent's Com. 309),' it is clear that by so doing the board was administering or carrying into execution law already made, and that too not by themselves, but prescribed by the Legislature of the state. * * * It will thus be seen that in calling for bids for the construction of a bridge at a certain point the board was not legislating or making law, *but was administering law already made, and in so doing were, in effect, acting administratively and with administrative discretion, and this has been so held.*"

For sections imposing duties upon persons charged with the *administration* of the Act, subject to the *supervisory* power of the Federal Farm Loan Board, see sections 651, 656, 672, 673, 674, 743, 751, 752, 753-56, 761, 771, 781, 791, 801-8, 814-23, 841-44, 851-56, 861, etc.

Sections other than section 641 must be looked to for the *direct*, or *non-supervisory* powers of the Federal Farm Loan Board.

Since the persons charged with *administering* the Act must administer "law already made," and since under section 641 the Federal Farm Loan Board can merely direct and control these persons in the performance of their duties *as specified in and by the Act*, it necessarily follows that in order to determine whether the aforesaid Board has the power *under section 641* to direct the receiver to enforce shareholders' liability, we must ascertain *whether any other section* of the Act *makes* it the *duty* of the *receiver* to *enforce shareholders' liability*. If any other section does, then the Federal Farm Loan Board would have the power to direct and control him in the performance of that duty. *If, however, no section imposes that duty upon him*, then the power of the Federal Farm Loan Board to direct him to enforce shareholders' liability would *not* exist as a *supervisory* power under *section 641*.

The only relevant sections are sections 961 and 963, which provide for the appointment of a receiver for joint-stock land banks. The relevant part of section 961, which § 963 makes applicable to joint-stock land banks, is set forth in the margin.[2]

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2. "Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct." (Sec. 961.)

As pointed out in our main brief, shareholders' liability runs to creditors, and is not an asset of a joint-stock land bank, nor a debt or claim belonging to it.

Section 961 does not impose any direct, primary duty upon a receiver to enforce shareholders' liability; consequently the Federal Farm Loan Board cannot have any *supervisory* power in the premises by virtue of section 641.

And, of course, it is idle to contend that section 641 expressly confers upon the Federal Farm Loan Board the power either to assess shareholders or to direct that a receiver enforce shareholders' liability. The power of the *Federal Farm Loan Board* to assess shareholders would be, not a *supervisory,* but a *direct,* or non-supervisory power. The power to direct a receiver to enforce shareholders' liability might be granted either as a supervisory or as a direct power. However, section 641 grants the Federal Farm Loan Board only *supervisory* powers; and since the power to direct a receiver to enforce shareholders' liability was not granted the aforesaid Board as a supervisory power, in view of the fact that no other section imposes a duty upon a receiver to enforce that liability, it necessarily follows that the contention of respondent is untenable so far as section 641 is concerned.

SECTION 651.

Section 651 is set forth in the margin.[3]

This section bears out our construction of Section 641. (Pp. 1-3, *supra.*) It charges the Federal Farm *Bureau* with the *execution* of the Act—that is, its *administration*—and gives the Federal Farm Loan *Board* only *supervisory,* as distinguished from *direct* or immediate, powers. The respondent does not claim in his brief that any section of the Act clothes the Federal Farm Loan *Bureau* with power either to assess shareholders or to direct a receiver to enforce shareholders' liability. Neither does he allege in his complaint that the aforesaid *Bureau* either assessed the shareholders of Milwaukee Joint Stock Land Bank, or directed respondent to sue petitioner. On the contrary he expressly predicates his alleged ownership or power to represent the alleged cause of action sought to be enforced upon the act of the Federal Farm Loan *Board.*

It follows, therefore, that the alleged power of the Federal Farm Loan *Board* to assess shareholders or to direct the *respondent* to enforce shareholders' liability cannot derive from Section 651. This section confers upon the aforesaid *Board* merely *supervisory* powers over the Federal Farm Loan *Bureau.* And since there is no section that imposes the duty upon the *Bureau* to assess shareholders or to direct a receiver to sue, and there is no claim that the *Bureau* has ever taken any ac-

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3. "There shall be established at the seat of government in the Department of the Treasury a bureau charged with the execution of this chapter, and of all acts amendatory, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." (Sec. 651.)

tion in the premises, it necessarily follows that Section 651 does not confer upon the Federal Farm Loan *Board* the power to assess shareholders or to direct a *receiver* appointed by it to enforce shareholders' liability.

There is an obvious difference between *supervisory* and non-supervisory powers. Other persons must be under a duty to act before merely *supervisory* powers can be called into play, or have any significance. For instance, as we write, four umpires, under the general supervision of Judge Landis, are performing their duties in the World's Series. The players of both teams are performing their duties under the general supervision of their respective managers.

Section 651 has no bearing upon this case, because it confers upon the Federal Farm Loan Board merely supervisory powers, not over *receivers,* but only over the Federal Farm Loan *Bureau,* and because the *Act* nowhere imposes upon the aforesaid Bureau any duty with respect to the assessment of shareholders or the enforcement of shareholders' liability.

SECTION 831 (i).

This section provides that the Federal Farm Loan Board shall have power:

> "To exercise general *supervisory authority* over the Federal land banks, the national farm loan associations, and the *joint-stock land banks* herein provided for."

This section confers merely *supervisory* authority over the *banks* and *associations* provided for by the Act. What have *they* to do with assessing shareholders or enforcing shareholders' liability?

Article 7, Sec. 8 of the Wisconsin Constitution gives circuit courts "supervisory control" over inferior courts.

In

> *State* v. *Superior Court*, 170 Wis. 385; 175 N. W. 927, 928,

the Court held that under that provision the circuit courts had the power to compel inferior courts *to act within their jurisdiction, to prohibit them from acting without their jurisdiction, and to reverse their extrajurisdictional acts,* independently of the appellate jurisdiction of the circuit courts over such inferior courts.

And that is precisely the power that Section 831 (i) confers upon the Federal Farm Loan Board over the *banks* and *associations* provided for in the Act. The supervisory power thereby granted the Board is limited to the aforesaid *banks and associations.* It does not extend either to stockholders, or to receivers. Neither can it possibly include the power to assess *shareholders,* or the power to enforce shareholders' liability. This liability is not to the banks and associations but to *creditors.* And the banks and associations have no powers, nor duties, with respect to the liability of the shareholders in the performance of which they can be supervised by the Federal Farm Loan Board.

SECTION 831 (j).

This section provides that the Federal Farm Loan Board may

> "exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Chapter."

This section was so fully discussed in our main brief that further discussion of it is unnecessary.

The respondent has not mentioned even *one* duty, or power of the Board, or purpose of the Act, to which the power of the Board to enforce shareholders' liability to creditors is necessary or requisite.

We have shown that Sections 641, 651 and 831 (i) confer upon the Federal Farm Loan Board merely *supervisory* powers, and that Section 831 (j) confers *incidental* powers.

The respondent has lumped these powers together and called them *administrative* powers. It is true that in a sense they are administrative powers, but in so lumping them one is liable to lose sight of the doubly limited nature of *supervisory* powers and *incidental* powers. Supervisory powers presuppose the existence of duties to be performed by other persons—in this case those who are engaged in administering the Act. *Incidental* powers presuppose one or more *primary* powers or duties.

The respondent argues that the *administrative* powers conferred upon the Federal Farm Loan Board by means of the sections above mentioned are so broad that they necessarily include the power to enforce shareholders' liability. We have already seen that this argument is unsound. It is also based upon a misconception of the very nature of *administrative* powers.

Administrative powers and duties always concern *existing laws*—laws made by Congress, etc.,—*which alone confer the powers and impose the duties.* The vice of the respondent's argument is that the Federal Farm Loan Act nowhere authorizes the Federal Farm Loan Board to assess shareholders or to enforce shareholders' liability, and that consequently the Board's attempt to do so was an unlawful exercise of *legislative,* as distinguished from *administrative,* powers.

The limited nature of administrative powers has frequently been pointed out by this Court. In

United States v. *George*, 228 U. S. 14,

the defendant in error had been indicted for perjury under Section 5392 of the Revised Statutes and Section 2291, as amended. Section 5392 is set forth in the margin[4]. The indictment charged that the defendant in error falsely and corruptly took his solemn oath in a proceeding wherein a law of the United States authorized an oath to be administered before the register of the United States land office at North Platte, Nebraska, the proceeding being the making of proof and final entry of a homestead claim.

> "The indictment charges that defendant took an oath and subscribed the same and deposed thereby that he built a house and other improvements on the land, which he described and stated their value to be $300.00, and established his residence thereon in April, 1901. The dimensions of the house and other improvements were stated. He further deposed that he had continuously resided on the land after he had established his residence thereon, and his family after his marriage in 1902, with the exception of certain absences which were stated.
>
> * * * * *
>
> "Defendant demurred to the indictment and stated as grounds thereof (1) that it failed to state

4. "Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished, etc."

or charge any crime under the laws of the United States. (2) That there was no law of the United States which required defendant, as claimant, in making his homestead proof, to testify with reference to the matters and things set forth in the indictment, the law of the United States requiring that the facts be proved by two credible witnesses other than the claimant, and did not authorize the claimant to testify in his own behalf with reference thereto.

"The demurrer was sustained, and the case was then brought here under the Criminal Appeals Act.

* * * * *

"* * * Section 2291 is certainly a necessary if not a determinative element in that consideration. It provides as follows: '* * * If * * * the person making such entry * * * proves by two credible witnesses that he, she or they have resided upon or cultivated the same for the term of five years * * * and makes affidavit that no part of such land has been alienated * * * and that he, she or they will bear true allegiance to the Government of the United States; then, in such case, he, she or they * * * shall be entitled to a patent.' It will be observed that the facts required to be proved are stated, by what means proved, and the manner of proof and its quantum. The facts to be proved are (1) cultivation of and residence upon the land and (2) non-alienation and allegiance; the means of proof of the first being two credible witnesses; of the second, affidavit of the claimant. In other words, the section is not only explicit as to what is to be proved but in what manner proved; and what is required of the claimant himself, to-wit, an affidavit, is distinguished from what he must establish by others, to-wit, two credible witnesses. *Such, then are the conditions, seemingly legislatively made the exact measure of the obligation of the homestead claimant.* It certainly will not be asserted that they can be detracted from. *It is asserted that they may be added to, and have been*

added to by virtue of certain sections of the Revised Statutes. We insert the sections in the margin.[5] *It will be seen that they confer administrative power only.* This is indubitably so as to Secs. 161, 441, 453 and 2478; and certainly under the guise of regulation legislation cannot be exercised. *United States*

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5. "Sec. 161. The head of each Department is authorized to prescribe regulations, not inconsistent with law, for the government of this Department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it.

"Sec. 441. The Secretary of the Interior is charged with the supervision of public business relating to the following subjects:

* * * * * *

"Second. The public lands * * *

"Sec. 453. The Commissioner of the General Land Office shall perform, under the direction of the Secretary of the Interior, all executive duties, appertaining to the surveying and sale of the public lands of the United States, or in anywise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all grants of land under the authority of the Government.

"Sec. 2246. The register or receiver is authorized, and it shall be their duty, to administer any oath required by law or the instructions of the General Land Office, in connection with the entry or purchase of any tract of the public lands; but he shall not charge or receive, directly or indirectly, any compensation for administering such oath.

"Sec. 2478. The Commissioner of the General Land Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this Title not otherwise specially provided for."

v. *United Verde Copper Co.*, 196 U. S. 207. Especial stress, however, is put upon Sec. 2246. By that section the register or receiver is authorized and it is made his 'duty to administer any oath required by law or the instructions of the General Land Office in connection with the entry or purchase of any tract of land.' These sections, it is contended, as we have seen, were the law of the indictment.

"Acting under the authority presumed to be given by Sec. 2246 and the other sections, a regulation was promulgated which prescribed forms of taking preemption and final homestead proof by questions and answers, and provided that 'the claimant will be required to testify, as a witness, in his own behalf in the same manner.' It was testimony exacted in pursuance of this regulation and in the manner directed by it which constitutes the charge of the indictment. It will be observed, therefore, that the claimant was required to testify as other witnesses. In other words, three witnesses were required; Sec. 2291 requires two only and, as we have said, points out what proof, in addition, the claimant himself shall give. *It is manifest that the regulation adds a requirement which that section does not, and which is not justified by Sec. 2246. To so construe the latter section is to make it confer unbounded legislative powers. What, indeed, is its limitation? If the Secretary of the Interior may add by regulation one condition, may he not add another? If he may require a witness or witnesses in addition to what Sec. 2291 requires, why not other conditions, and the disposition of the public lands thus be taken from the legislative branch of the Government and given to the discretion of the Land Department? It is not an adequate answer to say that the regulation must be reasonable. The power to make it is expressed in general terms. If given at all it is as broad as its subject and may vary with the occupant of the office. This is to make conditions of title, not to regulate those constituted by the statute.*

"In *United States* v. *United Verde Copper Co.*, *supra*, this court considered the power of the Secretary of the Interior under an act of Congress giving the right to cut timber from the public lands for

certain purposes, which were enumerated 'or domestic purposes,' and making the right subject to such rules and regulations as the Secretary of the Interior might prescribe 'for the protection of the timber and of the undergrowth growing on such lands, and *for other purposes.*' (Italics ours.) The Secretary made a regulation which provided, among other things, that no timber should be 'permitted to be used for smelting purposes, smelting being a separate and distinct industry from that of mining.' The justification urged for the regulation was that the word 'domestic' meant household. This court rejected the contention and decided that the regulation transcended the power of the Secretary. We said, *If Rule 7 (the regulation involved) is valid, the Secretary of the Interior has power to abridge or enlarge the statute at will. If he can define one term, he can another. If he can abridge, he can enlarge. Such power is not regulation; it is legislation.'*

"In that case the power of the Secretary of the Interior was directly associated with the right conferred. Yet it was held that such power could not qualify or limit the right. In other words, a distinction between the legislative and administrative function was recognized and enforced. And, similarly, this distinction must be recognized and enforced in the case at bar. The distinction is fundamental. Where the charge is of crime, it must have clear legislative basis. In illustration we may cite *Williamson* v. *United States,* 207 U. S. 425; *United States* v. *Keitel,* 211 U. S. 370; *United States* v. *Eaton,* 144 U. S. 677; *Morrill* v. *Jones,* 106 U. S. 466; *United States* v. *Briggs,* 211 U. S. 507; *Dwyer* v. *United States,* 170 Fed. Rep. 160.

Judgment affirmed."

Obviously, the power to *administer* an Act, or to supervise others in *their* administration of an Act, is limited by the Act itself. Otherwise, we should have a government, not of laws, but of men. The rule that not to grant powers is to prohibit them, would not exist.

And since the Federal Farm Loan Act nowhere authorizes the Federal Farm Loan *Board* or the Federal Farm Loan *Bureau*, or the *receiver*, or joint-stock land banks to enforce shareholders' liability, it necessarily follows that the Federal Farm Loan Board's attempt to do so is an unwarranted usurpation of *legislative* power. The power to enforce shareholders' liability cannot exist either as an *administrative*, or as a *supervisory* power. This is especially true, in view of the fact that the mere creation of the shareholders' liability without more gave creditors the power to enforce it. (Cases cited on p. 19, *infra*.)

CASES CITED BY RESPONDENT DISTINGUISHED.

The respondent is guilty of a lack of frankness in his use of the case of

United States v. *Chamberlin*, 219 U. S. 250.

The principal question involved in that case was whether the United States could maintain an action of debt to recover stamp taxes payable under the War Revenue Act of June 13, 1898. The Court pointed out that *"if the statute creates an obligation to pay the tax, and does not provide an exclusive remedy, the action must be regarded as well brought."* (P. 258) The Court decided that the statute did create an obligation to pay, and that the penal provisions were not exclusive. The Court then said:

> "We are also of opinion that the statute itself provides that payment may be enforced by action. Section 31 makes 'all administrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed,' applicable to the act. Within 'administrative' provisions must be included those which relate to the collection of the taxes imposed.

For the administration of the statute may well be taken to embrace all appropriate measures for its enforcement, and there is no substantial reason for assigning to the phrase which is used in the section quoted a narrower interpretation. It therefore comprehends the authority conferred by Sec. 3213 of the Revised Statutes in the following words:

> 'And taxes may be sued for and recovered in the name of the United States, in any proper form of action, before any circuit or district court of the United States for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the action.'

"This provision authorizing suit, with the sanction of the Commissioner of Internal Revenue (Rev. Stat., Sec. 3214), was originally enacted in 1866 (act of July 13, 1866, c. 184; 14 Stat., p. 111) as an amendment of the Internal Revenue act of June 30, 1864, chapter 173 (13 Stat. 239), and included within its scope the stamp taxes then in force. It must be deemed applicable also to the taxes imposed by the act of 1898."

The respondent quoted only the first four sentences of the foregoing excerpt. Of court, his omission of the Court's reference to Section 3213 gave an entirely different meaning to the preceding matter.

It is needless to consider *seriatim* the cases having to do with the General Land office. The statutes granting powers to the Secretary of the Interior and subordinate officials are set forth on p. 12, *supra;* and the limitations upon their powers are indicated in

United States v. *George,* 228 U. S. 14,

cited on p. 10, *supra.* The following cases cited by respondent fall within the category above mentioned:

Cosmos Exploration Co. v. *Gray Eagle,* 190 U. S. 301.

Catholic Bishop of Nesqually v. *Gibbon*, 158 U. S. 155.

Knight v. *United States Land Association*, 142 U. S. 161.

Williams v. *United States*, 138 U. S. 514.

Orchard v. *Alexander*, 157 U. S. 372.

And, of course, it is nothing short of ridiculous to compare the power of the Federal Farm Loan Board to the power of the President under Article 2, Sections 1 and 3, of the Constitution. With respect to the powers of the President under section 3, it has well been said:

> "The President has, under the Constitution and laws, certain duties to perform, among these being to take care that the laws be faithfully executed; that is, that the other executive and administrative officers of the government faithfully perform their duties; *but the statutes regulate and prescribe these duties, and he has no more power to add to, or subtract from, the duties imposed upon subordinate, executive and administrative officers by the law, than those officers have to add or subtract from his duties.*" 19 Op. Atty. Gen. 686.

The same reasoning applies to the very limited powers of the Federal Farm Loan Board. The trouble with the respondent's whole argument is that he is unable to point to any provision of the Federal Farm Loan Act that gives the Federal Farm Loan Board the power to assess shareholders, or to direct the receiver to enforce shareholders' liability. Neither does the Act confer upon the receiver the power to enforce shareholders' liability upon his own initiative, or impose upon him the duty of doing so whenever directed by anyone else.

The utter irrelevance of

Silberschein v. *United States*, 266 U. S. 221,

which arose under the War Risk Insurance Act, may be

demonstrated by the statement that the *Act* authorized the Director to discontinue compensation which he found to have been erroneously awarded. How can one administer an Act without being bound by it? *Where is the provision of the Federal Farm Loan Act that gives the Federal Farm Loan Board the power to direct the receiver to enforce shareholders' liability? Where is the provision that makes it the duty of the receiver to sue to enforce the liability under any circumstances?*

ENFORCEMENT OF SHAREHOLDERS' LIABILITY.

In his discussion of the enforcement of the liability imposed by Section 812 of 12 United States Code,[6] the respondent attempts to draw a distinction between a statute that expressly provides that shareholders shall be liable to creditors and one that provides that shareholders shall be liable for the contracts, debts and engagements of the bank or other corporation.

There exists no rational ground for any distinction, so far as a receiver's power to enforce shareholders' liability is concerned. The liability imposed by Section 812 of United States Code is "for all contracts, debts and engagements" of the bank to a specified extent. The contracts and engagements of the bank are with *third persons*, and the debts of the bank are due to *third persons*. It necessarily follows that the liability of shareholders for such contracts, debts and engagements runs

6. "Shareholders of every joint-stock land bank organized under this chapter shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

to *the persons to whom the bank is obligated,* and *not* to the bank.

The mere creation of the liability or the duty to pay persons holding obligations of the bank gives those persons power to enforce the obligation.

United States v. *Chamberlin,* 219 U. S. 250, 258—cited on p. 15 *supra.*

Richmond v. *Irons,* 121 U. S. 27, 48.

When, therefore, Congress created the liability, it at the same time empowered creditors to enforce that liability. And a receiver of the bank *cannot* enforce it—

1. Because he is not a creditor.

2. Because he is a mere *custodian* of the *bank's assets.*

3. Because the shareholders' liability to *creditors* is not an asset of the *bank.*

4. Because Congress in defining the powers of the Federal Farm Loan Board failed to grant it the power to direct its receivers to enforce shareholders' liability, as Congress had granted the power to the Comptroller to direct his receiver to enforce stockholders' liability to creditors of national banks.

5. Not to grant is to prohibit.

The respondent has cited only three relevant cases that hold that shareholders' liability is a corporate asset. We frankly stated in our main brief that a few states had denied the general rule that shareholders' liability is not a corporate asset. This rule is so generally recognized and enforced that text-writers state it as a rule of law. Of the cases cited by the respondent, the case of

McNeill v. *Pace,* 69 Fla. 349, 68 So. 177,

may well be distinguished because of the wording of the statute. *Unlike the* Federal Farm Loan Act, the Florida

statute does not specify just what the receiver may do, but provides that

> "the comptroller shall *apply to the courts,* in his own name, for the appointment of a receiver *to close up the affairs of such company.*" (P. 178.)

The State Supreme Court held that this broad general power was sufficient to enable the receiver to enforce shareholders' liability. The Federal Farm Loan Act contains no such broad grant of power. Section 961 of 12 United States Code provides that the receiver, under the direction of the Federal Farm Loan Board shall (1) take possession of the bank's assets, (2) collect all debts, etc., belonging to it, (3) sell or compound all bad or doubtful debts, and (4) sell all the real and personal property. Of course, in such a case the rule *expressio unius est exclusio alterius* applies.

Moreover, under the Florida statute the stockholder would have his day in court, since the Comptroller is forced to apply to the *courts* for the appointment of a receiver.

Lastly, in that case there was a dissenting opinion, as follows:

> "I regret my inability to concur in this opinion, especially as it leads to most desirable results; the convenience of having the receiver pursue the stockholders is manifest.
>
> It must, however, be admitted that a large majority of the courts had denied the power under very similar statutes, when our legislation was passed. It is a further fact that the section regulating the liability of stockholders is practically identical, so far as applicable to state banks, with the federal statute, so that it becomes a necessary deduction that our Legislature had the federal law before it when considering this legislation. It is a further fact that the federal statute specifically authorizes

> the receiver to enforce the stockholder's liability. It is fair, then, to assume that the Legislature intentionally omitted this specific power for reasons satisfactory to it, and for these reasons I am unwilling to so construe its action as to correct that omission."

In our case there is absolutely no doubt that the Congress had the National Bank Act before it when the Federal Farm Loan Act was drafted, and that it deliberately refused to grant the Federal Farm Loan Act the power to direct its receivers to enforce shareholders' liability.

The case of

State ex rel. Stone v. *Union Stock Yards State Bank,* 103 Ia. 549, 70 N. W. 752,

is also cited by the respondent. The statute in that case also required that an application be made to the courts for the appointment of a receiver. In this way a stockholder could have his day in court, instead of being subjected to Star Chamber proceedings.

The case of

King v. *Armstrong,* 50 Ohio St. 222, 34 N. E. 163,

cited by respondent arose under the National Bank Act.

The case of

Hynes v. *Illinois Trust & Savings Bank,* 226 Ill. 95, 80 N. E. 472

cited by the respondent has absolutely no relevancy to the facts in the case at bar. The receiver in that case was appointed under Section 25 of the then Corporation Act in a suit by a judgment creditor against the corporation and a stockholder to collect the amount due on unpaid stock subscription. Section 25 expressly authorized the receiver to sue if ordered to do so by the court. (See p. 27, *infra* for Section 25 of the then Corporation Act.)

Moreover, the power of the receiver to maintain the suit was not even discussed. The whole case turned upon the right of set-off.

The other case cited by respondent is

Wilson v. *Book*, 13 Wash. 676, 43 Pac. 939.

In that case, *too*, the receiver was appointed by a court, so that a stockholder would have his day in court. No sound reason is given by the Supreme Court for the rule adopted. The liability was admittedly created for the benefit of creditors; and the mere creation of the liability gave creditors the power to enforce it. Only by means of an express provision could a receiver be given that power.

In each of the following cases it was held that a receiver could not enforce stockholders' liability, although the statute imposing it did not expressly provide that stockholders should be liable to creditors:

Colton v. *Mayer*, 90 Md. 711, 45 Atl. 874;
Hammond v. *Cline*, 170 Ind. 452, 84 N. E. 827;
Runner v. *Dwiggins*, 147 Ind. 238, 46 N. E. 580;
Clapp v. *Smith*, 22 N. M. 153, 159 Pac. 523;
Brown v. *Trail*, 89 Fed. 641.

Like the Federal Farm Loan Act, the statutes in those cases provided merely that stockholders should be liable for the contracts, debts and engagements of the corporation.

The fact is that Congress did not intend that the Federal Farm Loan Board should have the power to enforce shareholders' liability to creditors. It gave that power to creditors. It failed to grant it to the Board, as well as other cognate powers that had been granted to the

Comptroller in and by the National Bank Act. (12 U. S. C. 191-200.) And it specified precisely what powers the Board should have. All others were accordingly prohibited.

There were valid reasons why the powers that were expressly granted to the Comptroller should be withheld from the Federal Farm Loan Board. The United States have no direct liability or pecuniary interest in joint-stock land banks, such as they have in national banks. (See main brief, pp. 89-90.) Only because the National Bank Act expressly authorized the Comptroller to enforce stockholders' liability (which was due to the pecuniary interest and the liability of the United States) did this Court hold that stockholders in national banks were not entitled to a day in court. Deprivation of a day in court should never rest upon mere inference. The intention of Congress not to grant a shareholder a day in court should be expressed in words that leave no doubt about the matter, just as it was in the National Bank Act.

LEGISLATIVE METHOD.

On pages 27, 28 of respondent brief it is said that there has been a change in legislative method since 1864, when the National Bank Act was passed. Respondent then asserts:

> "Examined in the light of this change in the method of legislating, it will be seen that what was accomplished by one method under the National Bank Act (the vesting of power in the comptroller *by a series of specific details*) was accomplished in the Farm Loan Act by a different method (*the vesting in the Farm Loan Board of broad administrative and supervisory authority.*)

We have seen that the administrative and supervisory powers granted the Federal Farm Loan Board do not and cannot include the power to enforce or to direct anyone else to enforce shareholders' liability.

The alleged difference in method also exists only in the assertion of respondent. The following sections of 12 United States Code vest powers in the Federal Farm Loan Board: 641, 651, 656, 657, 658, 659, 662, 663, 664, 671, 672, 673, 675, 676, 678, 679, 681, 683, 691, 694, 695, 713, 714, 718, 719, 721, 741, 743, 754, 755, 761, 771, 781, 815, 817, 818, 822, 823, 831, 841, 842, 843, 844, 853, 856, 861, 862, 864, 871, 872, 876, 878, 879, 881, 882, 884, 893, 914, 951, 952, 953, 961, 962, 963, 964, 972, 973, and 1001.

Talk about a series of specific details! And the Act descends into the very minutest detail, with never even a hint of the important power to enforce shareholders' liability to creditors.

From the argument of respondent one unfamiliar with the Federal Farm Loan Act would infer that the few sections mentioned by respondent were the only ones that conferred any powers upon the Federal Farm Loan Board, when as a matter of fact they are only a few relatively unimportant sections of the 68 sections above mentioned that confer powers upon the aforesaid Board. *Nothing* is left to implication. The multiplicity and certainty of the powers granted leave no room for doubt concerning what powers Congress intended to grant, even if the rule *expressio unius est exclusio alterius* be disregarded.

On page 42 *et seq.* the respondent argues that the power to enforce shareholders' liability is of such vital importance that Congress must necessarily have intended

to grant it to the Federal Farm Loan Board. Why, then, wasn't the power expressly granted? It would have been easy to say so, if Congress had intended to grant the power; and the very importance of the power is some proof that it was not overlooked by Congress, to say nothing of the fact that the language of a parallel section of the National Bank Act was closely followed down to the clause that expressly granted the power to enforce stockholders' liability, when there was a significant omission.

The remainder of respondent's brief is largely a repetition of the argument based upon the administrative powers of the Board, the argument *ab inconvenienti*, and argument based upon cases arising under the National Bank Act. The brief deals in generalities and assertions that certain things must necessarily be so, although the respondent is unable to support his assertions either by reference to the Federal Farm Loan Act, or by any ratiocinative process worthy of the name. In effect he advocates a new method of legislation. All that Congress needs to do is to create boards and confer *administrative* powers upon them. These boards can then do anything that may seem to them to be expedient or desirable,—a compendious method that dispenses with both legislative discretion and judicial functions. All government is remitted to an omniscent and omnipotent bureaucracy.

We submit that there is no warrant in the existing law, as distinguished from the will of the Federal Farm Loan Board, for the claimed power.

The statement of counsel that if respondent's construction is not adopted it will be necessary to institute ancillary suits in thirty states, is without any support in the record.

It is needless to waste the time of this Court in answering respondent's argument *ab inconvenienti*. The claimed power either exists or it does not exist. If Congress granted the power, all talk about convenience is beside the case. If Congress withheld the power, this Court cannot grant it; and all talk about hardship is futile. As said in

United States v. *First National Bank*, 234 U. S. 245, 260:

> "If the true construction has been followed with harsh consequences, it cannot influence the courts in administering the law. The responsibility for the justice and wisdom of legislation rests with the Congress, and it is the province of the courts to enforce, not to make, the laws."

We submit that the judgment of the Circuit Court of Appeals should be reversed.

Respectfully,

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APPENDIX.

HURD'S ILLINOIS REVISED STATUTES, 1917.

25. Suits against stockholders.) § 25. If any corporation or its authorized agents shall do, or refrain from doing any act which shall subject it to a forfeiture of its charter or corporate powers, or shall allow any execution or decree of any court of record, for a payment of money, after demand made by the officer, to be returned "No property found," or to remain unsatisfied for not less than ten days after such demand, or shall dissolve or cease doing business, leaving debts unpaid, suits in equity may be brought against all persons who were stockholders at the time, or liable in any way, for the debts of the corporation, by joining the corporation in such suit; and each stockholder may be required to pay his pro rata share of such debts or liabilities to the extent of the unpaid portion of his stock, after exhausting the assets of such corporation. And if any stockholder shall not have property enough to satisfy his portion of such debts or liabilities, then the amount shall be divided equally among all the remaining solvent stockholders. And courts of equity shall have full power, on good cause shown, to dissolve or close up the business of any corporation, to appoint a receiver therefor who shall have authority, by the name of the receiver of such corporation (giving the name), to sue in all courts and do all things necessary to closing up its affairs, as commanded by the decree of such court. Said receiver shall be, in all cases, a resident of the state of Illinois, and shall be required to enter into bonds, payable to the People of the State of Illinois, for the use of the parties interested, in such penalty and with such securities as the court may, in the decree or order, appointing the same require. In all cases of suits for or against such receiver, or the corporation of which he may be receiver, writs may issue in favor of such receiver or corporation, or against him or it, from the county where the cause of action accrued to the sheriff by act approved in this state for service. (As amended by act approved May 22, 1877. In force July 1, 1877, L. 1877, p. 66; Legal News Ed., p. 72.)

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Supreme Court of the United States

OCTOBER TERM, 1928

No. 39

J. R. WHEELER,
PETITIONER,

vs.

HOWARD GREENE,
RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.
RESPONDENT.

Brief for the respondent in opposition to the petition for a writ of certiorari in the case of Howard Greene, receiver of The Bankers Joint Stock Land Bank of Milwaukee vs. J. R. Wheeler, reported in 29 Fed. (2d) 468.

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(34,020)

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Supreme Court of the United States

OCTOBER TERM, 1928

No. 711

J. R. WHEELER,

PETITIONER,

vs.

HOWARD GREENE,

RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

RESPONDENT.

Brief for the respondent in opposition to the petition for a writ of certiorari in the case of Howard Greene, receiver of The Bankers Joint Stock Land Bank of Milwaukee vs. J. R. Wheeler, reported in 29 Fed. (2d) 468.

Respondent opposes the granting of a writ of certiorari upon the following grounds:

1. The construction of the statute here involved is plain; administration is proceeding promptly and efficiently and there is no reason why this court should assume jurisdiction.

2. The question involved is one of procedure and the reversal of this decision will not change or affect the substantive rights of the parties.

3. The decision by the Circuit Court of Appeals for the Seventh Judicial Circuit in this case and the similar decisions by the Circuit Court of Appeals for the Eighth Judicial Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, decided February 20, 1929,* and *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 23 Fed. (2d) 71, are in accord with each other and with applicable decisions of this court.

Statement of the Case.

The Bankers Joint Stock Land Bank of Milwaukee was organized under the provisions of the Federal Farm Loan Act, and had a capital of $1,200,000, divided into 12,000 shares of the par value of $100 each.

Operating with this capital, the Bank issued and there were outstanding in the hands of the public on July 1, 1927, $15,771,600 par value of farm loan bonds, secured by farm mortgages and other collateral on deposit with the Farm Loan Registrar for the Seventh Land Bank District, at St. Paul, Minnesota.

The Bank was unable to meet the interest maturing on its bonds on July 1, 1927, and, inasmuch as it was clearly insolvent, the Federal Farm Loan Board, proceeding under Section 29 of the Farm Loan Act, (U. S. C. §961) declared the Bank insolvent and ap-

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* A copy of this decision is printed as an Appendix to this brief infra pp. 35-45)

pointed the respondent, Howard Greene, its statutory receiver.

Following an investigation of the affairs of the Bank, by order of the Federal Farm Loan Board, dated January 11, 1928, a 100% assessment upon the shares of stock in the Bank was levied payable March 1, 1928, and the respondent, as statutory receiver, was directed to enforce collection.

It was determined from initial examination that the liabilities of the bank (not including as such its capital stock) exceeded its assets by more than $1,500,000 and that this deficiency would be increased in liquidation. A reappraisal of the properties covered by the mortgages showed the deficiency must materially exceed this figure; and there is no question, therefore, as to the necessity for a 100% assessment of the stockholders' liability for payment of the Bank's obligations.

There has been a 15% payment made on the bonds in liquidation; and with 85% of both principal and interest unpaid, the bonds of the Bank are being traded in at less than 40% of par, thus confirming the necessity for a 100% assessment.

Stockholders of the Bank have shown their appreciation of the necessity for a full assessment upon their stock and 256 stockholders of the total of 482 have paid their assessment in whole or in part in the sum of $507,925.

The year and a half which has elapsed since the appointment of respondent, as statutory receiver, has shown the dangers of stockholders dying, moving away or becoming insolvent. Under the circumstances, the delay incident to the granting of a writ of certiorari must increase the difficulties incident to enforcing the rights of the creditors of the Bank.

Statutes.

The enacting clause of the Federal Farm Loan Act provides in part:

> "An act . . . . to furnish a market for United States bonds, to create Government depositaries and financial agents of the United States, and for other purposes."

Section 1 of the Act (U. S. C. §641)* provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

> "That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 16 of the Act (U. S. C. §812) provides:

> "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

Section 17 of the Act (U. S. C. §831) provides in part:

---

* Foot Note: For convenience references to Title 12 United States Code are herein given as "U. S. C." and references to Federal Farm Loan Act as "F. L. A."

"That the Federal Farm Loan Board shall have power— . . .

(i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]

(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Section 29 of the Act provides in part:

[U. S. C. § 961] That upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, *and, on a like approval or order,* may sell all the real and personal property of such association *on such terms as the Federal Farm Loan Board* or said court shall direct." [Italics ours.]

[U. S. C. § 962] " . . . . Such receiver shall pay over all money so collected to the Treasurer

of the United States *subject to the order of the Federal Farm Loan Board* and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received." [Italics ours.]

[U. S. C. §963] " . . . Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."

[U. S. C. §965] " . . . No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board."

Summary of Argument.

The question involved is one of procedure. Two Circuit Courts of Appeals in three decisions have approved the procedure adopted by the Farm Loan Board. 256 stockholders, of a total of 482, have paid their assessment in whole or in part in the aggregate sum of $507,925. Delay will increase the difficulty of further collections due to insolvency or other similar cause.

The construction of the Act is plain.

Administration of the Farm Loan Act is expressly placed under "the direction and control" of the Farm

Loan Board; the Board is "charged with the execution" of the Act, and broad supervisory and incidental powers are expressly vested in it. (F. L. A. §§1, 3, 17 (i) (j); U. S. C. §§641, 651, 831.)

The National Bank Act contains no such broad grant of general powers as the Farm Loan Act vests in the Farm Loan Board, yet the power to levy an assessment upon stockholders of an insolvent national bank is implied in the comptroller as essential to the efficiency and utility of the law. Similar considerations require the implication of such a power in the Farm Loan Board under the much broader provisions of the Farm Loan Act.

The procedure suggested by petitioner would burden creditors of the bank with the expense and delay of a double receivership including a statutory receiver to liquidate the assets and a judicial receiver to take over the proceeds, give notice to creditors, determine claims, enforce the stockholders' liability and make distribution. Stockholders of the bank are located in over thirty states and a court receivership would require ancillary proceedings in each of these states. It is plain that this duplication of receivership, with its accompanying expense and delay, cannot have been intended by the Congress.

Petitioner proposes to negative any implied power in the Farm Loan Board because the receivership provision of the Farm Loan Act has no express clause such as set forth in the National Bank Act, for enforcement of the stockholders' liability. The National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation conferring increasingly large powers on administrative boards. Due to this

change, what was accomplished by one method under the National Bank Act (the vesting of powers in the Comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers). It follows, naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act; and omission of the detailed provisions found in the National Bank Act from the receivership provisions of the Farm Loan Act does not, by any implication, negative the existence of such powers.

Joint stock land banks are public corporations created for governmental purposes. The Congress has deemed supervision of such agencies by the Farm Loan Board essential to the fiscal policies of the Government and such supervision and control, being necessary during periods of operation of such banks, the Congress must have intended to continue such control through insolvency.

The construction here maintained is that adopted by the Farm Loan Board and it should be given great weight.

Cases arising under state statutes are irreconcilable and are not controlling here. The governmental interest in these constitutional agencies is not present in the case of ordinary state corporations. Every presumption is in favor of complete administration of these constitutional agencies by the Government.

The Federal authorities, cited by petitioner, so far as they are in point, sustain the right of the statutory receiver to sue.

ARGUMENT.

I.

The Question Involved Is One of Procedure and the Real Question in Issue Is One of Delay in Enforcing the Liability.

The substantive rights of the petitioner will not be affected by a reversal of the lower court, except to the extent that delay may increase the practical difficulties encountered by the statutory or court receiver, as the case may be, in enforcing the stockholders' liability.

At the time a similar power of assessment was implied in the comptroller in the case of a national bank, the court, in *Kennedy v. Gibson*, 8 Wall. 498, said:

> [8 Wall. 505] " . . . It would be attended with injurious consequences to forbid action against the stockholders until the precise amount necessary to be collected shall be formally ascertained. This would greatly protract the final settlement, and might be attended with large losses by insolvency and otherwise in the intervening time. The amount must depend in part upon the solvency of the debtors and the validity of the claims. Time will be consumed in the application of these tests, and the results in many cases cannot be foreseen. The same remarks apply to the enforced collections from the stockholders. A speedy adjustment is necessary to the efficiency and utility of the law; the interests of the creditors require it, and it was the obvious policy and purpose of Congress to give it. If too much be collected, it is provided by the statute, that any surplus which may remain after satisfying all demands against the asso-

ciation, shall be paid over to the stockholders. *It is better they should pay more than may prove to be needed than that the evils of delay should be encountered.*" [Italics ours.]

Similarly in *Korbly, Receiver, v. Springfield Institution for Savings, et al, 245 U. S. 330, 333,* the court held that the National Bank Act should not be given a technical construction which would so restrict the powers of the Comptroller as to delay and impede the settlement of the affairs of a bank and that the Act should be given a liberal interpretation to promote the expeditious winding up of a bank's affairs.

As pointed out in *Kennedy vs. Gibson,* 8 Wall. 498, 506, if by error of the assessing authority too large an assessment were made, the amount would not be lost to the stockholders, for the excess would be returned to them.

In the natural course of events, delay in enforcing assessment agains the stockholders will result in insolvency of some and inability to collect from others because of changes of address, death, or otherwise. The method of procedure adopted by the Farm Loan Board and approved by the Circuit Court of Appeals for the Seventh Circuit in this case also has been similarly approved by the Circuit Court of Appeals for the Eighth Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank of Kansas City, et al.,* (Appendix pp. 35-45, before Judges Kenyon, Johnson and McDermott, and *Krauthoff v. Kansas City Joint Stock Land Bank,* 23 Fed. (2d) 71, (Before Judges Lewis, Pollock and Scott). Under the circumstances, there would seem no justification for continued litigation.

II.

The Federal Farm Loan Board has Wide General Powers.

The Federal Farm Loan Act rests fundamentally on the grant to the Farm Loan Board of comprehensive general powers, so far reaching as necessarily to be exclusive.

Section 1 of the Act (U. S. C. §641) provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' Its administration shall be *under the direction and control of the Federal Farm Loan Board* hereinafter created." [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides that the Federal Farm Bureau is *"charged with the execution of this Act."*

Section 17 of the Act (U. S. C. §831), provides:

> "That the Federal Farm Loan Board shall have power— . . .
>
> (i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]
>
> (j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

III.

Petitioner's Construction of the Farm Loan Act, if Adopted, Will Involve Duplication of Receivership, Together With Increased Expense and Delay, and Will Necessitate Ancillary Equity Suits in Thirty States.

THE CONGRESS COULD NOT HAVE INTENDED SO UNREASONABLE AN INTERPRETATION.

Counsel for the petitioner attempt, by a comparison of the provisions of the Federal Farm Loan Act with those of the National Bank Act, to establish an intention to vest all rights and duties, subsequent to sequestration of the assets of an insolvent Joint Stock Land Bank, in a court receiver, saying with reference to the statutory receiver appointed by the Farm Loan Board:

> [*Petitioner's Brief*, p. 21] "The receiver is simply a collector or conservator of the assets of the bank. He takes possession of the books, records and assets . . . collects all debts, . . . sells all of the assets of the association . . . and pays over all money collected to the treasurer of the United States . . . His work is then performed, . . . There is no suggestion anywhere in the law that the receiver has anything whatever to do with the shareholders or their personal liability, or with the creditors of the bank and their claims against it."

> [*Petitioner's Brief*, p. 25] "The Banking Act has a complete system for the enforcement of the individual liability of stockholders. . . . .

> [Reviewing provisions for notice to creditors, allowance of claims, payment of dividends, etc., in National Bank Act, U. S. C. §§191, 192, 193, 194.] . . . In the Farm Loan Act all of these provisions are missing. No provision is made for giving notice to creditors of the bank for a limitation of the time of filing claims, for the allowance of claims, or the payment thereof, for the return of any surplus to the shareholders, or for the payment of the expense of the receivership. *It is therefore perfectly apparent from the statutes that the receiver of the Farm Loan Association was not intended to have any powers or duties whatever with regard to the enforcement of the individual liability of the stockholders, the proof of claims against the association, their payment and the final distribution.*" [Italics ours.]

Petitioner's brief thus assumes that the Congress intended to make the creditors of the Bank bear the expense of a double receivership including: first, a proceeding by the statutory receiver appointed by the Farm Loan Board to collect and liquidate the assets, paying the proceeds over to the Treasurer of the United States; and secondly, a proceeding by a judicial receiver appointed at the instance of a creditor in a court of equity to take over the fund in the hands of the Treasurer, give notice to creditors, enforce the stockholders' liability and make all distributions to the creditors.

This suggested interpretation of the Farm Loan Act is expressly contrary to the principles governing the liquidation of such institutions established in *Kennedy v. Gibson*, 8 Wall. 498, 505, (supra pp. 9-10) and *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333.

The expense of an additional receivership in itself seems controlling on the question of intention.

The duplication of procedure and expense seems an absurdity inasmuch as the Receiver appointed by the Farm Loan Board is an officer of the United States subject to the order of the Board and represents creditors as well as the corporation.

Under the provisions of Section 29 of the Farm Loan Act (U. S. C. §§961, 962, 963), such receiver:

(1) Executes bond to the United States for the faithful performance of his duties;

(2) Assumes control as an officer of the United States:—
United States v. Weitzel, 246 U. S. 533, 540, 541;
Krauthoff v. Kansas City Joint Stock Land Bank, et al., 23 Fed. (2d) 71, 73;
Steele v. Randall, 19 Fed. (2d) 40, 42.

(3) Pays all moneys collected to the Treasurer of the United States "*subject to the order of the Federal Farm Loan Board.*"

(4) Represents creditors as well as the corporation:—
Kennedy v. Gibson, 8 Wall. 498, 506.

In addition to the double receivership, it will be necessary, if the statutory receiver is without authority to enforce the stockholders' personal liability, to have ancillary proceedings in more than thirty states in order that the liability may be enforced.

Great Western Mining Co. v. Harris, 198 U. S. 561, 574.

The difficulties and expense incident to the enforcement of the stockholders' personal liability by a court receiver is illustrated by the history of attempted enforcement by such a receiver in Minnesota.

Hale v. Allinson, 188 U. S. 56, 65.

How the court receiver could acquire possession of the fund collected by the statutory receiver and which is, under the statute, deposited with the Treasurer of the United States "subject to the order of the Federal Farm Loan Board" is a question of considerable complexity. The members of the Board reside for purposes of territorial jurisdiction at their official residence, to-wit: The District of Columbia.

Butterworth v. Hill, 114 U. S. 128, 132.

Any attempt of the United States Court for the Eastern District of Wisconsin to subject the Treasurer of the United States to its jurisdiction for the purpose of exercising control over the fund specifically vested by Congress in an executive branch of the Government would inevitably result in "inextricable confusion and chaos."

In the light of the above authorities illustrating the complicated and expensive procedure necessary to enforce the stockholders' personal liability through a court receiver, it is plain that the Congress could not have intended to burden the creditors of insolvent joint stock land banks:

(a) with the expense of two receiverships,

(b) with the expense and uncertainty of ancillary proceedings,

(c) with the delay incident to appointment of a court receiver in a case where a statutory receiver is already in existence acquainted with the facts and competent to determine claims and enforce the stockholders' liability under the direction of an executive department of the Government charged with the execution of the law and the direction and control of its administration, and

(d) with the uncertainty, delay and expense arising out of the necessity for a creditor applying to a court for the appointment of a judicial receiver to continue the liquidation following sequestration of the assets of the bank by its statutory receiver.

As stated by the Circuit Court of Appeals for the Eighth Circuit in *Krauthoff v. Kansas City Joint Stock Land Bank* (Appendix; infra, pp. 35-45):

> "It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain, that the Farm Loan Board is charged with carrying out its provisions and to see 'that the moneys are applied toward the satisfaction of the bonds.'"

The interpretation suggested by counsel for the petitioner would ignore the rule that all laws are to be given a sensible construction and that where a literal application of a statute would lead to absurdity or where a particular construction of a statute would occasion great inconvenience or produce inequality and

injustice, that view is to be avoided if a reasonable interpretation can be given to it consistent with the legislative purpose.

United States v. Katz, 271 U. S. 354, 357.
Knowlton v. Moore, 178 U. S. 41, 77.

IV.

The Fundamental Question is the Scheme Intended by Congress; and an Express Grant of Power to Levy an Assessment is Unnecessary, Being Implied, as Necessary, to Effectuate the Scheme of the Act.

Petitioner contends *(Petitioner's Brief*, pp. 4 to 18) that the particularization of powers granted the Farm Loan Board and the failure expressly to vest power in the Board to levy an assessment upon stockholders negatives the existence of such a power in the Board and, therefore, none can be implied.

The fact that the Farm Loan Act vests specific duties in the Farm Loan Board with reference to matters upon which it is intended to have the Board act personally and not by delegation of its authority, should not prevent implication of a power of assessment. It was wise to give form to the Act by vesting certain duties specifically in the Farm Loan Board and this was done without intending thereby to limit the general powers of the Board.

The powers given to the Farm Loan Board under the Farm Loan Act are much broader than those given

to the Comptroller under the National Bank Act. The National Bank Act vests a large number of specific duties in the Comptroller of the Currency (see summary thereof, infra page 21); and it grants no general powers such as Section 1 and Section 17 (i) and (j) of the Farm Loan Act (U. S. C. §§641, 831) confers. There therefore is much greater reason for implying powers in the Farm Loan Board than in the Comptroller.

The National Bank Act contains no provision authorizing the Comptroller to make an assessment upon stockholders in the case of an insolvent bank; yet this court held such a power clearly implied.

Kennedy v. Gibson, 8 Wall. 498.

The statutes (U. S. C. Sec. 55) make express provision for assessment of stockholders of a national bank only for payment or restoration of the capital either because the capital is not paid up as required by law or the capital stock has been impaired by losses. This express statutory provision for assessment has no relation to the stockholders' personal liability for debts of the bank.

Commercial National Bank v. Weinhard, 192 U. S. 243, 247, 252.

There is no express statutory provision in the National Bank Act for the important function of determining the amount of the stockholders' liability and making an assessment. On the petitioner's theory *(Petitioner's Brief*, p. 27) this absence of express grant of power in the National Bank Act would require judicial proceedings for an assessment, presumably by a proceeding in equity brought by the statutory receiver.

However, this Court definitely settled the law to the contrary, holding power implied in the comptroller to make a conclusive assessment.

Kennedy v. Gibson, 8 Wall. 498, 505.
Casey v. Galli, 94 U. S. 673.
U. S. v. Knox, 102 U. S. 422.
Bushnell v. Leland, 164 U. S. 684.
Rankin v. Barton, 199 U. S. 228.
Christopher v. Norvell, 201 U. S. 216.

In reaching the conclusion that power to levy the assessment must be implied in the Comptroller, this court, in the *Gibson case*, 8 Wall. 498, laid most stress on the delay which would result, the "large losses by insolvency and otherwise in the intervening time"; the "time" which would be "consumed in the application of these tests," the necessity for a "speedy adjustment" as essential to "the efficiency and utility of the law," the fact that the interests of creditors required it, and that it "was the obvious policy and purpose of Congress to give it."

These considerations apply equally in the case at bar; but the reasons for implying power to levy a conclusive assessment apply much more strongly to the Farm Loan Board than to the Comptroller because of the wide general powers conferred on that Board.

V.

The Differences in Structure of the National Bank Act and Farm Loan Act Make Inferences From the Phraseology of the Former Inapplicable to the Latter.

THE STRUCTURE OF THE NATIONAL BANK ACT, ADOPTED IN 1864, SHOULD NOT CONTROL THE INTERPRETATION OF THE FEDERAL FARM LOAN ACT, ADOPTED IN 1916.

Petitioner proposes to negative any implied power in the Farm Loan Board because the receivership provision of the Farm Loan Act has no express clause on stockholders' liability such as is set forth in the National Bank Act *(Petitioner's Brief* pp. 22-25). His argument rests essentially on a comparison of a single section of each of the Acts, and it disregards the grant of wide general powers to the Farm Loan Board and the consequent difference in the structure of the Acts.

In considering the differences between the two Acts one must keep in mind that the National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation delegating increasingly large powers to administrative boards. This change is reflected in the Farm Loan Act.

Examined in the light of this change in the method of legislating, it will be seen that what was accomplished by one method under the National Bank Act (the vesting of power in the Comptroller by a series of

specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers).

An examination of the provisions of the National Bank Act makes clear this difference in structure and corresponding necessity for difference in construction of the National Bank Act and the Federal Farm Loan Act.

The fundamental duty of the Comptroller of the Currency is to require compliance with the Statutes regarding national bank notes and to keep accurate watch of them. (U. S. C. §§1, 26-28, 101-110, 124, 132-134, 137, 138, 151-153, 168-178, 185). So far as the affairs of the bank are concerned, the Comptroller's powers are granted in a series of specific details, such as approval of the bank's name or location (U. S. C. §§22, 30); definition of purchasable investment securities (U. S. C. §24); rules for acting as insurance or real estate broker (U. S. C. §92); approval of stock dividends or reduction of stock (U. S. C. §§58-59); approval of conversion of state bank (U. S. C. §35); or action as to branches (U. S. C. §36); or consolidation (U. S. C. §§33, 34, 34a). Further the National Bank Act has great detail as to the general conduct of the bank's business (U. S. C. §§55, 56, 60, 62, 81-89, 94, 121, 122, 125, 127, 141-146, 161-164).

No general grant of powers to the Comptroller is contained in the National Bank Act.

The Federal Farm Loan Act on the other hand contains a comprehensive general grant of powers to the Farm Loan Board (F. L. A. §§1, 17 (i) and (j) U. S. C. §§641, 831 see supra p. 11).

It follows naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act.

Following out the scheme of specific powers, the National Bank Act expressly gives the Comptroller power, in the case of a receivership:

(a) To give notice to creditors (U. S. C. §193),

(b) To approve claims (U. S. C. §194),

(c) To make ratable dividend of the money paid over to him by the Receiver (U. S. C. §194),

(d) To return any excess to the stockholders (U. S. C. §194),

(e) To pay the expenses of the receivership out of the assets of the Association (U. S. C. §196),

(f) To call a meeting of stockholders after payment of claims for the purpose of determining whether liquidation shall continue (U. S. C. §197), and

(g) To protect equities in mortgaged or pledged property (U. S. C. §§198, 199, 200).

In the Farm Loan Act none of these powers are expressly set forth but that Act has provisions (lacking in the National Bank Act) which confer wide general powers on the Farm Loan Board.

The petitioner disregards the wide grant of general powers to the Farm Loan Board; he bases his argument solely on this difference in phraseology of the grants of specific powers in the National Bank Act and the Farm Loan Act and claims that lack of express specification of such powers in the Farm Loan Act evidences an intention to withhold them (See *Petitioner's brief*, pp. 14-15).

Obviously application of such a rule of construction would lead to chaos. Powers essential to even the limited receivership permitted by the petitioner's theory would be lacking (U. S. C. §§196, 198, 199, 200). The impossibility of such a rule is evidenced by the costly and unwieldy double receivership which the petitioner is led to devise.

It becomes apparent, therefore, that any limitation of the powers of the Farm Loan Board by reference to the phraseology of the National Bank Act would be entirely inconsistent with the purpose and tenor of the Farm Loan Act and contrary to the Act's plain construction.

Far from the Farm Loan Act conferring less power on the Farm Loan Board than the Comptroller has in a receivership, as contended by the petitioner, the fact is that the Farm Loan Act expressly shows an intention to give the Farm Loan Board greater power than the Comptroller in such a case, because a national bank receiver may make sales of assets only on order of a court (U. S. C. §192) whereas a joint stock land bank receiver may make sale on order either of a court or the Farm Loan Board.

Section 29 of the Farm Loan Act (U. S. C. §961) provides:*

> [U. S. C. §961] "Such receiver, *under the direction of the Federal Farm Loan Board*, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, *on a like approval or order*, may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct." [Italics ours.]

VI.

The Joint Stock Land Banks are Constitutional Agencies of Government; and their Administration Under the Direction and Control of the Federal Farm Loan Board Necessarily Implies a Single Receivership and Enforcement of the Personal Liability of Stockholders Under Direction of that Board.

1.

Joint Stock Land Banks Were Created by the Congress to Serve as Fiscal Agents of the Government; They Were Created for Public and Not Private Purposes.

The constitutionality of the Federal Farm Loan Act was definitely established in *Smith v. Kansas City Title & Trust Company*, 255 U. S. 180, 209, 210, 211,

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* The statement of this section at page 33 of petitioner's brief is inaccurate in omitting the words "with the approval of the Federal Farm Loan Board or" and in substituting a capital for a lower case initial letter in the following word: "upon."

where the court held that the designation of joint stock land banks as depositaries of public money and authorization of their employment as financial agents of the Government brought them within the constitutional power of the Congress to facilitate the fiscal operations of the Government and that whether technically banks or not, these organizations may serve the governmental purposes declared by the Congress for their creation.

In accord:

Osborn v. Bank of the United States, 9 Wheat. 738, 860, 861.
Van Reed v. Peoples National Bank of Lebanon, 198 U. S. 554.

2.

Proper and Expeditious Administration of the Affairs of Joint Stock Land Banks is Essential to the Fiscal Policies of the Government.

The rule was early laid down that national banks as instruments designed to be used to aid the government are within the discretionary power of the Congress; and that the power of the Congress over these banks is exclusive.

Farmers & Merchants Natl. Bank v. Dearing, 91 U. S. 29, 33, 34.

The same principle applies to joint stock land banks.

3.

The Congress Intended to Continue Governmental Control Through Insolvency Proceedings.

No one disputes the necessity for supervision of joint stock land banks by the Federal Farm Loan Board prior to insolvency. If the Congress has deemed such supervision essential to furtherance of the fiscal policies of the Government while joint stock land banks are solvent, certainly the winding up and dissolution of such banks should be no less important in its effect upon such policies.

That was the principle given effect in *Cook County National Bank vs. United States*, 107 U. S. 445, 448.

4.

The Farm Loan Board's Powers are Exclusive.

On principle, it seems essential to preservation of the constitutional purpose of joint stock land banks to assist in the fiscal operations of the Government, that the courts refuse to interfere with the officers of the Government vested with authority to supervise and direct these agencies.

> *Krauthoff v. Kansas City Joint Stock Land Bank*, 23 Fed. (2d) 71, (C. C. A. 8th Cir. 1927).

In similar cases involving the administration of insolvent national banks the courts have held the admin-

istrative machinery established by Congress to be exclusive.

Liberty National Bank of South Carolina v. McIntosh, 16 Fed. (2d) 906, 909-10 (C. C. A. 4th Cir. 1927).

Gockstetter v. Williams, 9 Fed. (2d) 354, 356 (C. C. A. 9th Cir. 1925).

Altman v. McClintock, 20 Fed. (2d) 226, 229, 231 (Dist. Ct., Dist. of Wyo. 1927).

5.

The Stockholders' liability is to be applied With and in Aid of the Assets of the Bank Toward the Satisfaction of Its Obligations.

As above set forth, we believe it clear that the Federal Farm Loan Act intends the administration of joint stock land banks to be under the exclusive direction and control of the Federal Farm Loan Board. Such exclusive direction and control in the case of insolvency necessarily imports that the Farm Loan Board should have exclusive direction of the means of realizing payment of the Bank's obligations. This inclusion is emphasized by the fact that the great mass of every joint stock land bank's obligations necessarily are its bonds which are provided for specially and in detail by the Farm Loan Act. (F. L. A. §§16, 18, 19, 20, 21, U. S. C. §§814; 816-821; 841-864.)

As stated by this Court with reference to the similar stockholders' liability of national banks in *Richmond v. Irons*, 121 U. S. 27, 50: "Admitting that this liability [of the stockholders] is not strictly an asset

of the bank, . . . yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations."

The case of *McNeill v. Pace*, 69 Fla. 349; 68 So. 177, (1915) evidences the tendency of the courts where the statute permits of such a construction to hold that a statutory receiver may enforce the stockholders' personal liability.

The petitioner himself recognizes that the levy of an assessment upon stockholders and the enforcement of the collection of the stockholders' liability by suit at law are among the powers which "all relate to the liquidation and winding up of the bank and are essential to that operation." *(Petitioner's Brief*, p. 15).

6.

Purpose Indicated in Heading of Section 29 of Act.

Section 29 of the Farm Loan Act (U. S. C. §961) is designated as providing for "Dissolution and Appointment of Receivers". An examination of Section 29 discloses the purpose of the appointment of a receiver to be the winding up and dissolution of the corporation. From this it would seem to follow that an interpretation which authorizes the receiver completely to administer the affairs of the bank should be favored over one which requires enforcement of the stockholders personal liability and distribution of the assets of the bank in a separate proceeding in a court of equity.

Krauthoff v. Kansas City Joint Stock Land Bank, 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927).

State ex rel. Stone v. Union Stock Yards etc. Bank, et al., 103 Ia. 549; 70 N. W. 752.

Wilson et al v. Book, 13 Wash. 676; 43 Pac. 939.

7.

Payment of Assessments Without Suit Should be Possible.

Certainly, there should be some place where a stockholder can pay the assessment without suit, and the logical person for this purpose and for the enforcement of the liability is the statutory receiver, appointed by the Federal Farm Loan Board .

8.

Right of Offset Against Dividends on Bonds Held by Stockholders Should be Preserved.

Further if the statutory receiver is not the proper party to enforce the stockholders' liability, then the right to offset dividends on bonds or other claims in the hands of stockholders may be lost.

See—

King, et al. v. Armstrong, 50 Ohio State 222; 34 N. E. 163.

Hynes v. Illinois Trust & Savings Bank et al., 226 Ill. 95; 80 N. E. 753; 10 L. R. A. (N. S.) 472.

VII.

Construction of Act by Farm Loan Board.

The construction here maintained by the respondent is that adopted by the Federal Farm Loan Board (Rec. p. 4) and such construction should be given great weight, particularly where, as in this case, administration of the law is under "the direction and control" (Farm Loan Act §1 U. S. C. §641) of the Board, the Board is "charged with the execution of this Act" and broad supervisory and incidental powers are vested in it by express provisions of the act.

Federal Farm Loan Act, §§1, 3, 17 (i) and (j) 29. (U. S. C. §§641, 651, 831 (i) and (j), 961 and 962.)

This court will, if possible, follow the construction placed on a statute by the department of the government charged with its execution, particularly where the statute itself directs such department to make the necessary regulations to carry it into effect.

Jacobs v. Prichard, 223 U. S. 200, 213.
U. S. v. Hermanos y Compania, 209 U. S. 337,
Swigart v. Baker, 229 U. S. 187,
Blanset v. Cardin, 256 U. S. 319,
National Lead Co. v. U. S., 252 U. S. 140.

VIII.

Cases Under Other Statutes.

1.

Cases Arising Under State Statutes are Practically Irreconcilable and are not Controlling Here.

Fundamentally in cases arising under state laws the essential question always is the scheme intended by the legislature; in other words, what liability did the legislature intend to create and what remedy did the legislature intend therefor?

Terry v. Little, 101 U. S. 216, 217.

In considering decisions under state laws, the peculiar phraseology of the state act must be kept in mind, such as whether the liability is "to creditors" or "for debts," etc., and what, if any, remedy the state statutes provide, expressly or impliedly.

Patterson v. Lynde, 106 U. S. 519 at 520.

Where the law fails to provide for a statutory receiver to administer the affairs of the insolvent corporation, a proceeding by creditors' bill necessarily is the only available remedy and the authorities so holding are not in point here.

A statutory receiver "to close up the affairs of the company" has been held to have power to enforce the double liability under language similar to that here.

McNeill v. Pace, 69 Fla. 349; 68 So. 177.

In accord:

Wilson v. Book, 13 Wash. 676, 43 Pac. 939.

This is so, even where the liability is "to creditors."

State ex rel Stone v. Union Stock Yards, etc., Bank, 103 Ia. 549, 70 N. W. 752, 753.

In cases arising under state statutes, the federal courts deal with the matter as the construction of a state statute and follow the state rules, and that is the first point for consideration.

Terry v. Little, 101 U. S. 216, 217.

The controlling governmental interest in administration present in the case of constitutional agencies of the Government, such as joint stock land banks, is not present in the case of ordinary corporations formed under general state laws. Every presumption should be in favor of complete administration by the Government where, as in this case, such administration is obviously in furtherance of the constitutional purpose.

2.

The Federal Authorities Cited by Petitioner, so far as They are in Point, Sustain the Right of the Statutory Receiver to Sue.

In *Richmond v. Irons*, 121 U. S. 27 (cited in *Petitioner's Brief*, p. 28) no statutory receiver had been appointed and a creditors' bill was the only method for enforcement of the liability.

The case of *King v. Pomeroy*, 121 Fed. 287 (cited in *Petitioner's Brief*, p. 21) is distinguishable on similar grounds.

Both of these cases in fact lend their support to the interpretation of the law which, in a case where a statutory receiver has been appointed, would permit such receiver to enforce the personal liability of stockholders.

In both of these cases (*Irons* Case, 121 U. S. 27, 49 and *Pomeroy* Case, 121 Fed. 287, 291) the court speaks of the enforcement of the stockholders' liability as a part of the liquidation of the bank, at least so closely connected with it as to constitute parts of one series of transactions.

Further, these cases must be read in the light of the fact that a statutory receiver of a bank represents creditors as well as the corporation and should enforce all rights.

Kennedy v. Gibson, 8 Wall. 498, 506.

CONCLUSION.

The whole argument of the petitioner reduces itself to an inference from omission in the Farm Loan Act of the express provision for enforcement of the stockholders' liability set forth in the National Bank Act. The argument overlooks the fact that even under the National Bank Act the Comptroller's power of assessment of this liability is implied; it ignores the broad general powers given to the Farm Loan Board which are not given to the Comptroller; and it disre-

gards the confusion, delay and waste that would result from this construction.

No reasonable construction of the Act can justify a second receivership; the existence of the statutory receiver acting under the direction of the Farm Loan Board, vested by statute with the broadest powers of administration and liquidation necessarily excludes any possibility of an accompanying judicial receivership. The Congress certainly could not have intended so peculiar or unusual a result; on the contrary the intention of the Act is plain to vest the right to enforce the stockholders' personal liability in the receiver appointed by the Farm Loan Board.

The question involved is essentially one solely of procedure. The construction of the Act is plain. The decisions of the Circuit Court of Appeal are in accord and in conformity with applicable decisions of this court; and the receivership ought not to be subjected to the expense and delay of continuance of the litigation.

We respectfully submit that the petition for a writ of certiorari should be denied.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
Counsel for Respondent.

Appendix

UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT.

No. 8151.—December Term, A. D. 1928.

EDWIN A. KRAUTHOFF,
Appellant,

vs.

KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI, et al.,
Appellees.

Appeal from the District Court of the United States for the Western District of Missouri.

Before Kenyon, Circuit Judge, and Johnson and McDermott, District Judges.

KENYON, Circuit Judge, delivered the opinion of the court.*

The Kansas City Joint Stock Land Bank organized, under the Federal Farm Loan Act, became insolvent in 1927, and was by the Federal Farm Loan Board, under the provisions of the Federal Farm Loan Act (12 U. S. C. A., Chap. 7, sections 961 and 963), placed in the hands of a receiver, who took possession

* Foot Note: Inasmuch as the opinion of the court covers a number of questions, parts of the opinion bearing on the principles involved in the enforcement of the stockholders' double liability have been printed in blackface type.

of all the assets of the Bank of every description. Appellant after that time purchased certain of the bonds of said bank for the express purpose, as admitted in his argument in this Court, of bringing suits thereon for himself and for clients whom he hoped to secure. Two of these he brought as plaintiff in the District Court of the United States for the Western District of Missouri, the numbers of which in this Court are 7874 and 7939, and will be designated herein by those numbers, one in the District Court of the United States for the District of Kansas (No. 7938, this Court), and one was brought by a stockholder named Raab in the District Court of the United States for the Western District of Missouri, in which appellant was attorney for the plaintiff (No. 7875, this Court). The defendants were substantially the same in all of these cases. The real object and purpose of these four suits was to oust the receiver appointed by the Federal Farm Loan Board, and to substitute a receiver appointed by the Court to take charge of the assets. The previous suits were dismissed by the trial courts, and their action was affirmed by this Court (23 F. (2d) 71 and 73), with a modification in one of them upon petition for rehearing that the dismissal by the District Court be without prejudice.

This Court decided in these cases that the Act under which the Kansas City Land Stock Bank was created prescribed the manner in which it should be wound up in case of insolvency; that the situation was similar to the insolvency of a national bank; that the receiver appointed by the Board was a public officer, and that he was in possession of the assets in dis-

charging his duty at the time the suits were brought, and that the Court had no right to interfere with such receiver in the proper discharge of his duties. In Cases numbered 7874, 7875 and 7939 (23 F. (2d) 71), argued and decided together, this Court said that questions might arise during receivership that would require judicial determination.

Appellees urge that every question involved in the present case has been determined in some of the previous ones between substantially the same parties.

We have examined appellant's brief of 198 pages, which evidences much research and philosophical meditation, to discover what, if any, issues are now presented that have not been passed on by this Court in some of these cases.

As a type of the various cases, we refer to Case No. 7874. There the prayer of the petition is almost identical with the prayer for relief in this case. In that case appellant asked judgment against the Land Bank in the sum of $5,000 with interest, and for a lien upon the assets in the hands of the registrar, Ryker; that he have judgment for his interest in the trust fund, and that the same be ascertained; that the Court appoint a receiver to take possession of the bank's property of every kind and character, including that pledged as security for the bonds; that the total amount of bonds be ascertained, together with ownership; that an accounting and discovery be had of all transactions of the Kansas City Joint Stock Land Bank, or of any individuals or corporations in connection therewith. **These matters are all covered by the prayer in this suit, which however asks in addition that the receiver to be appointed be invested**

with authority in equity to enforce the outstanding stockholders' liability due and owing by the stockholders of the Kansas City Joint Stock Land Bank of Kansas City. This question was however referred to in the former opinions of this Court, and was in fact the basis of Suit No. 7939. On that subject this Court said (Krauthoff v. Kansas City Joint-Stock Land Bank, 23 F. (2d) 71, 72-73): "It cannot be thought that there was any other purpose in making the assets of the insolvent bank subject to the order of the board than the use of them,—and the stockholder's liability if necessary,—in settlement of the insolvent estate,—to pay the bank's debts; nor could those debts be paid until its creditors and the amount due each should be ascertained. A receiver appointed by the Comptroller must report to him, and a receiver appointed by the board must report to it."

Appellant devotes some seventy-four pages of his brief to the question of pledged assets. This question was in Case No. 7938, appeal from the District Court of Kansas. Judge Pollock in the District Court said that the "Receiver is entitled to the possession of the securities pledged back of the bonds now outstanding, either in this jurisdiction or any other jurisdiction or location, and in my opinion they are no more subject to be wrested from his possession and control by a receiver appointed by this court than by any other person. As the law under which the bonds owned by plaintiff were issued so provides, it must be held, in my judgment, this court is powerless at the suit of plaintiff, who, by the very act of purchasing the bonds,

consented a receiver, appointed as was defendant Compton, should in case of insolvency of the Bank, take possession and hold the same to be applied as the law directs." This Court upheld that decision and in a per curiam opinion said: "It (the suit) was brought by a creditor who owned bonds issued by Kansas City Joint Stock Land Bank of Kansas City, Missouri, in his own behalf and in behalf of all other creditors who might wish to join in the suit. The bill asks the court to appoint a receiver of the farm mortgages and United States Government Bonds pledged with C. A. Ryker, registrar, as security for the payment of the bonds. Ryker resides at Wichita, Kansas, and the suit was brought in that district because that was the situs of the property that appellant sought to have impounded in receivership. The ultimate relief sought was the same as that in the other cases." A petition for rehearing therein was denied. So it appears the question of pledged collateral and its protection was before this Court in the prior cases.

It is entirely within bounds to say that every question presented on this appeal has been passed on by this Court in one or the other of the former appeals in cases between the same plaintiff (appellant here) and substantially the same defendants (changes in defendants being merely nominal). The only difference in this case is that while in the other suits brought by the appellant he sued on five bonds; here he adds an additional bond of $1,000, on which it is alleged that the interest due is unpaid.

In Case No. 7874, this Court said: "The board found the joint-stock bank to be in default of its obligations, that it was insolvent, and in May, 1927, placed

it in the hands of William R. Compton as its receiver." Therefore it appears that when that case was considered there had been defaults upon the part of the bank in the payment of its obligations, and in the bill in Case No. 7874 is this allegation: "plaintiff further states that on or about the 1st day of May, 1927, the Kansas City Joint Stock Land Bank of Kansas City, Missouri, made default of its outstanding Federal Loan Bonds, the interest of which had matured on that date." So that while the specific question of default in interest on this bond was not before the court in the former appeals, the cases were considered on the theory that defaults in the obligations of the Land Bank had occurred.

Notwithstanding the fact that appellant in its reply brief states that it does not in this action seek to substitute a Court receivership for the statutory receivership, and that it is asking the court to compel a statutory receiver to fully discharge his duties and to appoint a receiver only in case the present receiver does not discharge his duty as receiver as ordered by the Court or as lacking in the power to do so, we are satisfied that the whole purpose of this bill, as in the other cases, shows that this is exactly what has been and is sought to be done. The only way that appellant can work out the theories he has advanced in his brief is to secure the displacement of the present receiver and to have one appointed by the Court. This suit is to all intents and purposes the same as Case No. 7874; though perhaps dressed in a slightly different garb, it is merely an ingenious attempt to retry questions that were supposed to have been determined in that case.

This case would end here by application of the doctrine of res judicata, *Cromwell v. County of Sac*, 94 U. S. 351; *Radford v. Myers*, 231 U. S. 725; *Hart Steel Co. v. Railroad Supply Co.*, 244 U. S. 294; *United States v. Moser*, 266 U. S. 236; *North Carolina R. R. v. Story*, 268 U. S. 288; *Union Cent. Life Ins. Co. v. Drake*, 214 F. 536, were it not that on rehearing in Cases numbered 7874, 7875 and 7939, this Court said: "On Consideration Whereof, It is now here ordered by this Court that the decree of this Court entered on November 28, 1927, be, and it is hereby, modified and amended so as to provide that the dismissal of the action in the District Court of the United States for the Western District of Missouri, be without prejudice and thus modified the decree of said District Court will stand affirmed by this Court in accordance with the opinion heretofore filed on November 23, 1927."

Appellant urges in its brief that the Court modified the affirmance by providing that the dismissal be "without prejudice", thus recognizing that in another case involving the same subject matter other issues might be presented. It is doubtful if the binding effect of the doctrine of res judicata was not destroyed by the modification of the Court upon rehearing. We do not think the Court intended that the useless performance of trying the same case over again was to be indulged in. It had tried in its opinion to guard against any contention that its holding limited a court of competent jurisdiction from consideration of questions that might arise during the receivership. We have examined the petition for rehearing in Case No. 7874, and the same questions as argued upon the hear-

ing were reiterated there, but it was especially called to the attention of the Court that it had not made clear whether or not defendants would be subject to suit under proper circumstances calling for judicial interference, and we think that is what the Court desired to make clear in granting the modification of the opinion. However the language of the modification is broad and this Court in *Harrison v. Remington Paper Co.*, 140 F. 385, 399, said: "Rulings and decisions in the course of an action which is finally dismissed without prejudice adjudge nothing because the final judgment by its terms is that nothing has been adjudicated, and this fact is the only res adjudicata. Such a judgment determines that the parties are left as free to litigate every issue in the action dismissed as they would have been if it had never been commenced."

In No. 7938, the case from Kansas, no rehearing was granted, so the matters there determined stand as res judicata.

While probably the holding of this Court in Numbers 7874 and 7939 cannot technically be regarded as res judicata because of the order on rehearing, yet the reasoning of the Court is entirely in accord with our present conclusions as to the matters there discussed and here involved.

As to the question of a Court receiver to enforce the stockholders' liability under the Federal Farm Loan Act, since the former decisions, the Court of Appeals of the Seventh Circuit in the case of Green, Receiver, v. Wheeler, decided December 13, 1928, has held that a receiver appointed by the Federal Farm Loan Board has the power to make an assessment againt the stock-

holders similar to the power of the Comptroller under the National Banking Act to make assessments against stockholders of a bank, and said: "We are of opinion that, without specific provision for suit by the receiver against the stockholders, the purpose of the Farm Loan Act was to provide a continuous, effective and complete means of liquidating the debts of insolvent concerns under the supervision, direction and control of the Board." With this we agree.

On the question concerning pledged securities and the protection of pledged collateral, we have before referred to the holding of the Kansas District Court affirmed in this Court in No. 7938, which opinion has been in no way modified.

On page 159 of appellant's brief, he states: "The appointment of a receiver is merely incidental to the relief prayed by the plaintiff. The assets for which the appointment of a receiver is prayed, are the assets which are pledged for the payment of the bonds, assets in which the defendant Langworthy, as statutory receiver, has no right of possession, unless and until the debt for which such assets were pledged has been paid. It is not contended in the present suit that the District Court has the power to appoint a receiver for any assets within the lawful possession of the statutory receiver under the Federal Farm Loan Act". We think there is lack of merit in this contention. The Federal Farm Loan Act is a broad one, seeking to carry out a public purpose. It provides, section 961 (U. S. C. A. Title 12, Chap. 7, Sec. 961): "Such receiver, under the direction of the Federal Farm Loan Board, shall take possession of the books, records, and

assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct." This provision covers all assets. **It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain; that the Farm Loan Board is charged with carrying out its provisions and to see "that the moneys are applied toward the satisfaction of the bonds."**

We may say further that we are not impressed with appellant's standing in a court of equity. He purchased his bonds after the Board had appointed a receiver, and frankly admits in argument that he did so for the sole purpose of bringing lawsuits and attracting legal business. If appellant when he purchased the bonds was in quest of lawsuits, such quest has been entirely successful. He knew when he made the purchases that under the provisions of the Farm Loan Act a receiver could be appointed by the Farm Loan Board to take charge of all the assets of the insolvent bank. It was in the bondholder's contract that the receiver, with the approval of the Federal Farm Loan Board,

or upon the order of a court of record of competent jurisdiction, could sell the real and personal property of the bank on such terms as the Federal Farm Loan Board or the Court should direct. It would seem that appellant was not therefore in a position to question the appointment of a receiver by the Farm Loan Board. We do not mean to say, nor did this Court, in its previous opinions hold, that no questions could arise in relation to liquidating the affairs of the Farm Loan Bank that might be the subject of judicial determination. The Farm Loan Board and its receiver are not immune from all judicial process or control. Appellant as a bondholder has been denied no rights and there is no ground for the intervention of a court of equity up to this time. While there are some general allegations of fraud in appellant's bill, nothing is alleged that would constitute fraud or show that the receiver was not fairly attempting to protect all interests intrusted to him. We think this case is totally without equity and the trial Court was right in dismissing the same.

Affirmed.

Filed February 20, 1929.

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CHARLES ELMORE CR
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In the

Supreme Court of The United States

October Term, 1928.

No. 39

J. R. WHEELER,

Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

RESPONDENT'S BRIEF.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,

Counsel for Respondent.

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In the

Supreme Court of The United States

October Term, 1928.

No. 711.

J. R. WHEELER,
Petitioner,

vs.

HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

RESPONDENT'S BRIEF.

STATEMENT OF CASE.

This is a proceeding on writ of certiorari to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, which reversed the judgment of the District Court for the Eastern District of Wisconsin,

in an action instituted by the respondent, Howard Greene, Receiver (there plaintiff), against the petitioner, J. R. Wheeler (there defendant). The action was brought to enforce the statutory liability of the petitioner, J. R. Wheeler, as a stockholder of the Bankers Joint Stock Land Bank of Milwaukee.

The District Court's judgment was rendered on demurrer; and the sole question here involved is whether the Federal Farm Loan Board may make an assessment of the statutory liability of the stockholders of an insolvent joint stock land bank and authorize its collection by the receiver of the bank appointed by the Board.

The opinion of the Circuit Court of Appeals is reported in 29 Fed. (2nd) 468 (R. pp. 14-22).

The District Court rendered no opinion.

STATUTES. *

Some parts of the Federal Farm Loan Act and National Bank Act deemed important are set out in the Appendix hereto (*Infra* pp. 64-72).

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* For convenience references to Title 12 United States Code are herein given as "U. S. C." and references to sections of the Federal Farm Loan Act as "F. L. A."

SUMMARY OF ARGUMENT.

The administration of the Farm Loan Act is expressly placed under "the direction and control" of the Farm Loan Board; the Board is "charged with the execution" of the Act and broad supervisory and incidental powers are expressly vested in it (F. L. A. §§1, 3, 17 (i) (j); U. S. C. §§641, 651, 831).

The comprehensive administrative powers of the Farm Loan Board necessarily include the assessment and collection of the stockholders' statutory liability. Petitioner seeks to negative power in the Farm Loan Board to provide for assessment and collection because the receivership provision of the Farm Loan Act has no express clause such as set forth in the National Bank Act, for enforcement of the stockholders' liability. This argument overlooks the fundamental difference in the structure of the two acts and disregards the wide general powers conferred on the Farm Loan Board but not given to the Comptroller under the National Bank Act.

Even under the National Bank Act the power to levy an assessment on the stockholders for this additional liability is implied.

The National Bank Act was adopted in 1864 and the Farm Loan Act in 1916. One great change in this interval was the development of legislation conferring

increasingly large powers on administrative boards. Due to this change, what was accomplished by one method under the National Bank Act (the vesting of powers in the Comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative powers). It follows naturally, therefore, that the National Bank Act has more specific provisions as to receivership than the Farm Loan Act; and the omission of the express specific provision found in the National Bank Act from the receivership provisions of the Farm Loan Act does not by any implication negative the existence of such power.

Analysis of the history of the Farm Loan Act, when compared with that of the National Bank Act, including the proceedings in the Congress at the time of the adoption of the Farm Loan Act and the proposal of amendments thereto that failed, corroborates these conclusions and shows that the affairs of joint stock land banks were to be placed under the control and direction of the Farm Loan Board in all relations, whether during solvency or insolvency, and that there was no intention to require creditors to bring separate suit in equity to enforce this stockholders' liability.

Joint stock land banks are public corporations created for governmental purposes. Their supervision is deemed by the Congress essential to the fiscal policies

of the government, and such supervision and control being necessary during the periods of operation of such bank must have been intended to continue throughout all phases of insolvency. The stockholders' statutory liability was provided to improve the security of the bonds of the bank, which are an instrumentality of government; and the stockholders' liability is to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations.

The procedure suggested by the petitioner would burden creditors of the bank with the expense and delay of a double receivership, including a statutory receivership to liquidate the assets and a judicial receivership to enforce the stockholders' liability. The stockholders of the bank are located in over thirty states and a judicial receivership would require ancillary proceedings in each of these states. This duplication with its accompanying expense and delay cannot have been intended by the Congress.

The construction here maintained is that adopted by the Farm Loan Board and it should be given great weight.

Cases arising under state statutes for stockholders' liabilities are irreconcilable and are not controlling here. The government instrumentality in these constitutional agencies is not present in the case of ordinary state corporations. Every presumption is in

favor of complete administration of these constitutional agencies by the government.

The so-called rules of statutory construction asserted by the petitioner are subject to qualification and are not applicable here.

ARGUMENT.

The method of procedure adopted by the Farm Loan Board and approved by the Circuit Court of Appeals for the Seventh Circuit in this case also has been approved by the Circuit Court of Appeals for the Eighth Circuit in the case of *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 31 Fed. (2d) 75, and *Krauthoff v. Kansas City Joint Stock Land Bank, et al.*, 23 Fed. (2d) 71.

Petitioner's brief rests primarily on the express grant of authority to the receiver of a national bank to enforce the stockholders' personal liability (U. S. C. §§191, 192) as compared with the receivership provision of the Federal Farm Loan Act (U. S. C. §§961, 962, 963) which does not include any such express specific instruction to the receiver appointed thereunder.

Fundamentally the petitioner's argument disregards the differences in scheme and structure of the two acts and also ignores the broad grant of executive and administrative powers to the Farm Loan Board.

I.

The Federal Farm Loan Board Has Wide General Powers and May Fix Details of Administrative Procedure Thereunder.

The Federal Farm Loan Act rests fundamentally on the grant to the Farm Loan Board of comprehensive general powers, so far reaching as necessarily to be exclusive.

Section 1 of the Act (U. S. C. §641) provides:

> "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

> "That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 17 of the Act (U. S. C. §831) provides:

> "That the Federal Farm Loan Board shall have power—. . .

"(i) To exercise *general supervisory authority over* the Federal land banks, the national farm loan associations, and *the joint stock land banks* herein provided for. [Italics ours.]
"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

The language of *Section 1 of the Act* placing " . . . Its administration . . . under the direction and control of the Federal Farm Loan Board . . ." must have been used advisedly to give the widest administrative authority possible to the Farm Loan Board.

The placing of the *"administration"* of the act *"under the direction and control of the Federal Farm Loan Board"* (§1 of the Act) necessarily imports (a) the existence of broad powers to fill in administrative details by establishing methods by which privileges or rights may be secured; and (b) the existence of such quasi judicial and legislative powers as are necessary to put the law into effect.

This conclusion reached from the very nature of the language used is sustained by a number of decisions defining administrative powers.

In *United States v. Chamberlin*, 219 U. S. 250, the government sued to recover certain stamp taxes and the question considered was whether an action lay for recovery of the tax. The court, in confirming the power to sue and recover the tax, said:

[219 U. S. 269] "We are also of opinion that the statute itself provides that payment may be enforced by action. Section 31 makes 'all ad-

ministrative, special, or stamp provisions of law, including the laws in relation to the assessment of taxes, not heretofore specifically repealed', applicable to the act. Within 'administrative' provisions must be included those which relate to the collection of the taxes imposed. *For the administration of the statute may well be taken to embrace all appropriate measures for its enforcement,* and there is no substantial reason for assigning to the phrase which is used in the section quoted a narrower interpretation. . . ." [Italics ours.]

In *Cosmos Exploration Company v. Gray Eagle Oil Company,* 190 U. S. 301, the court, in considering statutory powers, much less broad than those here under consideration, held that "the general administration of the . . . Act" was vested in the Land Department and, accordingly, that the Department might adopt rules and regulations for its administration, saying:

[190 U. S. 308] "There can be, as we think, no doubt that the general administration of the forest reserve act, and also the determination of the various questions which may arise thereunder before the issuing of any patent for the selected lands, are vested in the Land Department . . . By virtue of that jurisdiction the General Land Department has power to review and set aside (though not arbitrarily) the decisions of local officers relating to those questions, where such officers have power to make those decisions in the first instance (Citing cases).

"The Land Department also has power to adopt and did adopt rules and regulations for the administration of the forest reserve act. The power existed by virtue of the provisions

> of the Revised Statutes, sections 441, 453 and 2478. Courts will take judicial notice of rules and regulations made by the Land Department regarding the sale or exchange of public land. . . . ."

See also in this respect *Catholic Bishop of Nesqually v. Gibbon*, 158 U. S. 155, 166.

Under language providing that the Commissioner of the General Land Office should perform "*under the direction* of the Secretary of the Interior," the court, in *Knight v. United States Land Association*, 142 U. S. 161, said:

> [142 U. S. 177] "The phrase, 'under the direction of the Secretary of the Interior,' as used in these sections of the statutes, is not meaningless, but was intended as an expression in general terms of the power of the Secretary to supervise and control the extensive operations of the Land Department of which he is the head. It means that, in the important matters relating to the sale and disposition of the public domain, the surveying of private land claims and the issuing of patents thereon, and the administration of the trusts devolving upon the government, by reason of the laws of Congress or under treaty stipulations, respecting the public domain, the Secretary of the Interior is the supervising agent of the government to do justice to all claimants and preserve the rights of the people of the United States. . . ."

In *Silberschein v. United States*, 266 U. S. 221, broad administrative powers were held to be vested in the director of the Veterans Bureau under a law directing that official "to administer, execute and enforce the provisions of the Act."

For the function of the judiciary where administrative power has been vested in an administrative board or body, see *Interstate Commerce Commission v. Illinois Central Railroad Company*, 215 U. S. 452, 470.

In addition to the power vested in the Farm Loan Board by Section 1 to direct and control its administration, *Section 3 of the Act* provides for a "Federal Farm Loan Bureau" "*under the general supervision*" of the Farm Loan Board "*charged with the execution of this Act.*" This in itself imports the widest possible administrative powers. That has been the construction with reference to the President of the United States under the similar provision of Article II. of the Constitution that "he shall take care that the laws be faithfully executed."

William Howard Taft—The Presidency, 63, 70, 76 to 85.

William Howard Taft—Our Chief Magistrate and His Powers, 78 to 85, 94.

In re Neagle, 135 U. S. 1, 63.

Logan v. United States, 144 U. S. 263.

Supplementing the powers vested in the Board by Sections 1 and 3 of the Act, *Section 17 of the Act* provides inter alia:

"That the Federal Farm Loan Board shall have power . . .

"(i) To exercise general supervisory authority over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Broad administrative powers have been held to exist under language similar to that of Section 17 (i) vesting *"general supervisory authority"* in administrative officers.

In *Knight v. United States Land Association,* 142 U. S. 161, the court said with reference to a grant of supervisory authority to the Secretary of the Interior:

> [142 U. S. 178] ". . . The statutes in placing the whole business of the Department under the supervision of the Secretary, invest him with authority to review, reverse, amend, annul or affirm all proceedings in the Department having for their ultimate object to secure the alienation of any portion of the public lands, or the adjustment of private claims to lands, with a just regard to the rights of the public and of private parties. Such supervision may be exercised by direct orders or by review on appeals. *The mode in which the supervision shall be exercised in the absence of statutory direction may be prescribed by such rules and regulations as the Secretary may adopt.* When proceedings affecting titles to lands are before the Department the power of supervision may be exercised by the Secretary, whether these proceedings are called to his attention by formal notice or by appeal. It is sufficient that they are brought to his notice. . . ." [Italics ours.]

See also

Williams v. United States, 138 U. S. 514, 524.

Orchard v. Alexander, 157 U. S. 372, 378.

In addition to the supervisory powers vested in the Board by paragraph (i) of Section 17, paragraph (j) of the same Section vests the Board with authority "To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of (the) Act."

By Section 1 of the Act, the Board is charged with the direction and control of its administration and, by Section 17 (i), with general supervisory authority over joint stock land banks. This, together with the grant of authority in Section (j) "To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of (the) Act," seems clearly to include all necessary powers to provide rules and regulations, fill in administrative details and exercise such quasi-judicial and legislative powers as are necessary to give effect to the various provisions of the Act.

As stated in *Talbott v. Silver Bow County*, 139 U. S. 438:

> [139 U. S. 443] "Further it is a general rule in the construction of statutes that when in the earlier and declaratory sections the scope and extent of the power and privileges granted are once stated, the character of the grant as thus disclosed controls and interprets all subsequent sections; and it is unnecessary in each subsequent section to restate or use words and expressions which shall fully disclose the extent of those powers and privileges; but these subsequent sections will be understood, (unless there be words of restriction and limitation therein,) as coextensive with and applicable to the scope, and the full scope, and extent of the powers theretofore granted."

The case of *United States vs. George*, 228 U. S. 14, emphasized in Petitioner's reply brief, was distinguished in *United States vs. Smull*, 236 U. S. 405, 411, and *United States vs. Morehead*, 243 U. S. 607, 616. See also *United States vs. Birdsall*, 233 U. S. 223, 230.

II.

The Administrative Powers of the Farm Loan Board are so Comprehensive as Necessarily to Include the Assessment and Collection of the Stockholders' Liability.

1.

The Personal Liability of Stockholders is for the debts of the Bank and the Act contemplates its enforcement by the Federal Farm Loan Board.

Section 16 of the Federal Farm Loan Act (U. S. C. Section 812) provides:

> "Shareholders of every joint stock land bank organized under this Act shall be held individually responsible, equally and ratably, and not one for another, *for all contracts, debts, and engagements* of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares." [Italics ours.]

Petitioner assumes throughout *(Petitioner's brief* 2, 4, 5, 8, 9, 15, 20, 50, 60, 61, 71, 75, 81 and 87) that the double liability of stockholders is *to creditors* and, inasmuch as the receiver is not a creditor and this liability is not an asset of the bank, he, therefore, cannot enforce it.

From the language of the statute it is clear that the liability is not one phrased *to creditors* but a liability *for the debts of the bank* without any express statement as to who shall enforce it.

The distinction between a statute phrasing the liability as *to* creditors and one phrasing the liability as *for* the debts of the bank was emphasized in *Wilson, et al. v. Book, et al.*, 13 Wash. 676, 43 Pac. 939, where the court said:

> [43 Pac. 939] ". . . It will be seen that there is no language which in express terms gives the creditors the immediate or any right of action. The liability is not on, but for, the contract, debt, or agreement. . . . There is nothing in our constitution which defines the method by which this liability shall be made available. Hence the method must be determined by the courts, and their aim should be to prescribe one which will accomplish the object of the provision with the least inconvenience to the creditors, without unnecessary annoyance to the stockholders. . . ."
>
> [43 Pac. 940] "The receiver, when appointed, takes possession of all the property of the corporation for the benefit of all its creditors; and it should be held that he has the right, under the direction of the court, to enforce every liability, of whatever nature, which the court may find necessary to fully protect the rights of the creditors. In this way all creditors will share alike, and the entire affairs of the corporation, including the adjustment of the liabilities of its stockholders, will be subject to the control of the court in a single action, and unnecessary delay and expense prevented. . . ."

See also *Patterson v. Lynde*, 106 U. S. 519, where the court emphasized the same difference in language.

Further, Section 16 of the Act (U. S. C. §812) provides that shareholders "*shall be held* individually responsible", not merely that they shall *be* respon-

sible. The language of the section imports action and a duty to prevent the escape of the shareholder and, by implication, must vest in the Federal Farm Loan Board (charged with the administration of the Act and vested with all necessary power to fulfill its duties and carry out the purposes of the Act) the duty of enforcing the liability.

In the above respects (a) the provision that the stockholders are liable *for* the debts and engagements of the bank and (b) the provision that the stockholders shall be *held* individually responsible for the debts and engagements of the bank, Section 16 of the Act (U. S. C. §812) is similar to the stockholders' liability provision of the National Bank Act, liability under which is enforced by assessment of the Comptroller.

The decisions holding that creditors can enforce such a liability merely arise from the legal conclusion that the creditors, as beneficiaries of the statutory obligation, should have the right to enforce it when necessary to prevent it being a nullity. The right of creditors to enforce such a liability and the appointment of a receiver for that purpose by a court of equity does not arise from a statutory creation of a remedy therefor but from the lack of a statutory remedy and the resulting consequence that equity must give a remedy in order that the right shall not be destroyed.

That such is the case is illustrated by the statement of the court in *Richmond v. Irons*, 121 U. S. 27, where, in speaking of the absence of a statutory remedy to enforce the stockholders' liability of a national bank in voluntary liquidation, the court said:

> [121 U. S. 48] "... It can hardly be supposed that the omission in the statute to provide an express and specific course of proceeding, by way of judicial remedy, in case of voluntary liquidation, left the creditors of such an association in such circumstances without remedy against either a deficiency of assets or the results of a fraudulent maladministration. . . . ."

Our contention is that the Congress did not intend this Act to provide the right without a means of enforcement but, on the contrary, that the Farm Loan Board, under its administrative powers, is entitled to provide the means of enforcement and that, therefore, the resort to equity for lack of other remedy is unnecessary.

2.

The Administrative Powers of the Farm Loan Board are not Limited by the Express Grant of Specific Powers.

Petitioner contends (*Petitioner's brief*, p. 70) that the particularization of powers granted the Farm Loan Board and the failure expressly to vest power in the Board to levy an assessment upon stockholders negatives the existence of such a power in the Board and, therefore, none can be implied.

The fact that the Farm Loan Act vests specific duties in the Farm Loan Board with reference to matters upon which it is intended to have the Board act personally and not by delegation of its authority, does not negative the existence of administrative powers under the express grant thereof in Sections 1, 3 and 17 (i) and (j) of the Act (U. S. C. §§641, 651, 831 (i)

(j)). It was wise to give form to the Act by vesting certain duties specifically in the Farm Loan Board and this was done without intending thereby to limit the general administrative powers of the Board.

The rules for construction applicable in fixing the administrative powers of the Farm Loan Board under the Federal Farm Loan Act are like those applied in the construction of the general powers granted to the President under Article II of the Constitution.

Hamilton, in speaking of the fact that Article II of the Constitution vests the executive powers in the President of the United States and that the same Article, in succeeding Sections, proceeds to delineate particular cases of executive power, said:

> [Letter to the Gazette of the United States: June 29, 1793] . . . "The difficulty of a complete enumeration of all the cases of executive authority, would naturally dictate the use of general terms, and would render it improbable that a specification of certain particulars was designed as a substitute for those terms, when antecedently used. The different mode of expression employed in the constitution, in regard to the two powers, the legislative and the executive, serves to confirm this inference. In the article which gives the legislative powers of the government, the expressions are, 'All legislative powers herein granted shall be vested in a congress of the United States.' In that which grants the executive power, the expressions are, '*The executive power* shall be vested in a President of the United States.'
>
> The enumeration ought therefore to be considered, as intended merely to specify the principal articles implied in the definition of executive power; leaving the rest to flow from the general grant of that power, interpreted in con-

formity with other parts of the Constitution, and with the principles of free government."
Alexander Hamilton's Works (Ed. by John C. Hamilton) Vol. VII, pp. 80-81.

See also *Kansas v. Colorado*, 206 U. S. 46, 81 to 83.

3.

The omission of express specific provision for enforcement of the liability does not diminish the power of the Farm Loan Board.

The broad, administrative and supervisory powers vested in the Farm Loan Board under the Farm Loan Act seem clearly to comprehend the fixing by the Board of such administrative details as are necessary for enforcement of the liability either directly through the Board or through the receiver appointed by the Board as the Board shall determine.

Petitioner proposes to negative any power in the Farm Loan Board to fix the administrative details for collection of the stockholders' liability because the receivership provision of the Farm Loan Act has no express clause on stockholders' liability such as is set forth in the National Bank Act *(Petitioner's brief*, pp. 16, 17, 51). His argument rests essentially on a comparison of a single section of each of the Acts and it disregards the grant to the Farm Loan Board of administrative powers much wider than those of the Comptroller under the National Bank Act. The difference in structure of the acts we discuss hereinafter. (See *infra* pp. 27-32).

The difference in the grant of powers appears from the following comparison:

FARM LOAN ACT.

F. L. A. Sec. 1 (U. S. C. 641). "That this Act may be cited as the 'Federal Farm Loan Act.' *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

F. L. A. Sec. 3 (U. S. C. 651). "That there shall be established at the seat of government in the Department of the Treasury *a bureau charged with the execution of this Act and of all Acts amendatory thereof,* to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

F. L. A. Sec. 17 (U. S. C. 831). "That the Federal Farm Loan Board shall have power—

. . .

"(i) *To exercise general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for.

"(j) *To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this act.*" [Italics ours.]

NATIONAL BANK ACT.

[No corresponding section.]

U. S. C. Sec. 1. "There shall be in the Department of the Treasury *a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds* and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury." [Italics ours.]

[No corresponding section.]

[No corresponding section.]

The Comptroller is merely the chief officer of a bureau charged with the execution of laws passed by Congress relating to the issue and regulation of national currency, whereas the Federal Farm Loan Board, besides being directed to supervise a bureau charged with the execution of the entire Farm Loan Act, also is charged with the direction and control of the administration of the entire Act and is expressly empowered to exercise general supervision over joint stock land banks and granted such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of the Act. Clearly, such incidental powers must necessarily include such powers as are reasonably necessary to direct and control the administration of the Farm Loan Act, including therein the provision of Section 16 providing for a double liability of stockholders.

In discussing the incidental powers under Section 17 (j) of the Act (U. S. C. §831) *(Petitioner's brief* pp. 53-58) petitioner treats the subject as if all that were involved are the powers expressly granted by the preceding nine subdivisions of this Section 17. He disregards the fact that the incidental powers are those necessary for the Board to "fulfill its duties and carry out the purposes of this Act"—and the duties so provided for include the general administrative powers granted in the first section of the Act.

See *First National Bank in St. Louis v. State of Missouri*, 263 U. S. 640, 659, defining an incidental power as one necessary to carry into effect those which are granted.

Petitioner's suggested interpretation fails to give any weight whatsoever to the administrative powers vested in the Board by Sections 1, 3 and 17 (i) of the Act (U. S. C. §§641, 651, 831 (i)). This is expressly contrary to the rule that all the words used in a statute should be given their proper signification and effect.

Platt v. Union Pacific Railroad Company, 99 U. S. 48.

Lawrence v. Allen, 7 How. 785, 793.

4.

Even under the National Bank Act power in the Comptroller to make assessment of stockholders' liability is implied.

Enforcement of the stockholders' liability under the National Bank Act requires, as a condition precedent, that the extent of deficiency in assets be determined and the amount of the stockholders' liability be fixed.

Under the provisions of the National Bank Act, a receiver is vested with authority to enforce the liability (U. S. C. Sec. 192) but no express provision is made for assessment of the liability, either by a receiver or the comptroller, and the enforcement of this liability is not included in the matters expressly placed under the Comptroller's direction. The only express authority to the Comptroller in this connection is with reference to the assets "*of the association*" and debts, etc. "*belonging to it.*"

The statutes (U. S. C. Sec. 55) make express provision for assessment of stockholders of a national bank only for payment or restoration of the capital either because the capital is not paid up as required by law or the capital stock has been impaired by losses. This express statutory provision for assessment has no relation to the stockholders' personal liability for debts of the bank.

Commercial National Bank v. Weinhard, 192 U. S. 243, 248.

It is clear, therefore, that there is no express statutory provision in the National Bank Act for the important function of determining the amount of the stockholders' liability in making an assessment.

On the petitioner's theory *(Petitioner's brief*, p. 61) the absence of express grant of power of assessment in the National Bank Act would require judicial proceedings for an assessment, presumably by a proceeding in equity brought by the statutory receiver. On petitioner's theory,this conclusion also would follow from the fact that the Comptroller was given express power to levy assessments to restore capital.

Petitioner states (*Petitioner's brief*, pp. 80, 77, 83, 86) that the National Bank Act "*expressly* provides" that the receiver shall enforce the stockholders' liability "under the direction of the Comptroller." Examination of the Act (U. S. C. Sec. 192) will show this statement to be erroneous.

The provision for receivership of a national bank (U. S. C. Sec. 192) set forth (a) that the receiver "under the direction of the Comptroller" shall take possession of the bank's assets and collect the debts, etc.

"belonging to it," (b) that "upon the order of a court of record" he may compound debts and sell property and (c) that he may enforce the stockholders' liability. It will be noted that the provision for the Comptroller's direction refers only to taking possession of the bank's assets and collecting its debts and that the provision for enforcement of the stockholder's liability follows not the provision for action under direction of the Comptroller but the provision for action under order of a court. On the petitioner's theory of statutory construction *(Petitioner's brief,* pp. 41-45) the express provision for direction of the Comptroller as to taking possession of the bank's assets and collection of its debts with no corresponding provision as to enforcement of the stockholders' liability, would negative any power of the Comptroller to levy an assessment.

This court, however, definitely settled the law to the contrary of both of the petitioner's theories, holding power implied in the Comptroller to make a conclusive assessment.

Kennedy v. Gibson, 8 Wall. 498, 505.
Casey v. Galli, 94 U. S. 673.
U. S. v. Knox, 102 U. S. 422.
Bushnell v. Leland, 164 U. S. 684.
Rankin v. Barton, 199 U. S. 228.
Christopher v. Norvell, 201 U. S. 216.

In reaching the conclusion that power to levy the assessment must be implied in the comptroller, this court, in the *Gibson case,* 8 Wall. 498, laid most stress on the delay which would result, the "large losses by insolvency and otherwise in the intervening time";

the "time" which would be "consumed in the application of these tests," the necessity for a "speedy adjustment" as essential to "the efficiency and utility of the law," the fact that the interests of creditors required it, and that it "was the obvious policy and purpose of Congress to give it."

Similarly, in *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333, the court held that the National Bank Act should not be given a technical construction which would so restrict the powers of the comptroller as to delay and impede the settlement of the affairs of a bank and that the Act should be given a liberal interpretation to promote the expeditious winding up of a bank's affairs.

These considerations apply equally to the case at bar; but the reasons for holding that power to provide for assessment and collection of the stockholders' liability is vested in the Farm Loan Board apply much more strongly in the case of the Farm Loan Board because of the wide administrative and supervisory powers conferred on that Board.

III.

The Differences in Structure of the National Bank Act and Farm Loan Act Make Inferences from the Phraseology of the Former not Applicable to the Latter

1.

The Structure of the National Bank Act Adopted in 1864 Should Not Control the Interpretation of the Federal Farm Loan Act Adopted in 1916.

We take issue with the proposition that any inference can be drawn from the omission in a statute of a provision embodied in a different statute adopted over half a century earlier. However, broader considerations show the entire inapplicability of the petitioner's theory to the case at bar.

Methods of legislation differ in different countries or states at the same time and in the same country or state at different times. The National Bank Act is a product of the year 1864; the Farm Loan Act of the year 1916. One great change in this interval was the development of legislation delegating increasingly large powers to administrative boards. The change in the method of legislation during this period by vesting broad administrative powers in executive departments, in place of the specific and limited powers provided in earlier laws is well illustrated by the differences in structure of the National Bank Act and the Farm Loan Act. The powers vested in the Comptrol-

ler on the one hand and the Farm Loan Board on the other have much similarity, but the structure of the Act for accomplishing the grant of powers is radically different.

Examined in the light of this change in the method of legislating, it will be seen that what was accomplished by one method under the National Bank Act (the vesting of power in the comptroller by a series of specific details) was accomplished in the Farm Loan Act by a different method (the vesting in the Farm Loan Board of broad administrative and supervisory authority).

An examination of the provisions of the National Bank Act makes clear this difference in structure and corresponding necessity for difference in construction of the National Bank Act and the Federal Farm Loan Act.

2.

The comptroller has limited and specific powers as contrasted with wide general powers of the Farm Loan Board.

The limited and specific grants of power to the Comptroller under the National Bank Act in contrast with the wide grant of powers to the Federal Farm Loan Board under the Federal Farm Loan Act made advisable express authority to enforce the personal liability of stockholders under the National Bank Act while under the Federal Farm Loan Act this was clearly comprehended by the general grant of powers.

The fundamental duty of the Comptroller of the Currency is to require compliance with the Statutes

regarding national bank notes and to keep accurate watch of them. (U. S. C. §§1, 26-28, 101-110, 124, 132-134, 137, 138, 151-153, 168-178, 185). So far as the affairs of the bank are concerned, the comptroller's powers are granted in a series of specific details, such as approval of the bank's name or location (U. S. C. §§22, 30); definition of purchasable investment securities (U. S. C. §24); rules for acting as insurance or real estate broker (U. S. C. §92); approval of stock dividends or reduction of stock (U. S. C. §§58-59); approval of conversion of state bank (U. S. C. §35); or action as to branches (U. S. C. §36); or consolidation (U. S. C. §§33, 34, 34a). Further, the National Bank Act has great detail as to the general conduct of the bank's business (U. S. C. §§55, 56, 60, 62, 81-89, 94, 121, 122, 125, 127, 141-146, 161-164).

No general grant of powers to the comptroller is contained in the National Bank Act. There is no express provision by which "the Comptroller is charged with the execution of the National Bank Act" as the petitioner implies. (*Petitioner's brief* p. 81).

The Federal Farm Loan Act, on the other hand, contains an express comprehensive general grant of power to the Farm Loan Board (F. L. A. §§1, 3, 17 (i) and (j) U. S. C. §§641, 651, 831 see *supra* pp. 7-13).

It follows naturally, therefore, that the National Bank Act has more specific provisions as to a receivership than the Farm Loan Act.

Following out the scheme of specific powers, the National Bank Act expressly gives the comptroller power, in the case of a receivership:

(a) To give notice to creditors (U. S. C. §193),

(b) To approve claims (U. S. C. §194),

(c) To make ratable dividend of the money paid over to him by the Receiver (U. S. C. §194),

(d) To return any excess to the stockholders (U. S. C. §194),

(e) To pay the expenses of the receivership out of the assets of the Association (U. S. C. §196),

(f) To call a meeting of stockholders after payment of claims for the purpose of determining whether liquidation shall continue (U. S. C. §197), and

(g) To protect equities in mortgaged or pledged property (U. S. C. §§198, 199, 200).

In the Farm Loan Act none of these powers are expressly set forth but that Act has provisions (lacking in the National Bank Act) which confer wide general powers on the Farm Loan Board (*supra* pp. 7-13).

Petitioner's difficulty lies in the fact that he disregards the wide grant of general powers to the Farm Loan Board; he bases his argument solely on this difference in phraseology of a single sentence in the National Bank Act and claims that lack of express specification of such powers in the Farm Loan Act evidences an intention to withhold them. (See *Petitioner's brief*, pp. 46-52.)

In so doing petitioner disregards the rule that a statute should not be construed according to a single sentence or member of a sentence but according to all the provisions of the Act and its objects and policy.

Pollard v. Bailey, 20 Wall. 520, 525.

United States v. Boisdore, 8 How. 113.

A law is the best exposition of itself and every part of an act is to be taken into view for the purpose of discovering the mind of the legislature.

United States ex rel. Parish v. MacVeagh, 214 U. S. 124, 135.

Pennington v. Coxe, 2 Cranch, 33, 37.

Obviously, application of the rule of construction suggested by petitioner would lead to chaos. Powers essential to even the limited receivership permitted by the petitioner's theory would be lacking (U. S. C. §§196, 198, 199, 200). The impossibility of such a rule is evidenced by the costly and unwieldy double receivership which the petitioner is led to devise.

It becomes apparent, therefore, that any limitation of the powers of the Farm Loan Board by reference to the phraseology of the National Bank Act would be entirely inconsistent with the purpose and tenor of the Farm Loan Act and contrary to the Act's plain construction. The petitioner himself appreciates that power to require claims to be filed, etc., expressed in the National Bank Act (U. S. C. §§193-194) must be implied in the Farm Loan Board. (*Petitioner's brief* p. 81).

Far from the Farm Loan Act conferring less power on the Farm Loan Board than the comptroller has in a receivership, as contended by the petitioner, the fact is that the Farm Loan Act expressly shows an intention to give the Farm Loan Board greater power than the comptroller in such a case, because a national bank receiver may make sales of assets only on order of a court (U. S. C. §192) whereas a joint stock land bank

receiver may make sale on order either of a court or the Farm Loan Board.

Section 29 of the Farm Loan Act (U. S. C. §961) provides:

> [U. S. C. §961] ". . . Such receiver, *under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board or upon the order of a court of record* of competent jurisdiction, may sell or compound all bad or doubtful debts, and, *on a like approval or order,* may sell all the real and personal property of such association on such terms as the Federal Farm Loan Board or said court shall direct." [Italics ours.]

IV.

The history of the Federal Farm Loan Act, when compared with that of the National Bank Act, makes clear their difference in structure and the inapplicability of the theories of construction in the Petitioner's Brief.

1.

The Farm Loan Act as Adopted.

In construing a statute, the court will consider that reports of the committees of congress are entitled to consideration.

> *United States v. St. Paul, Minneapolis & Manitoba Railway Company, et al.,* 247 U. S. 310, 318.

Statements by the chairman or other member of the committee in explanation of the bill are entitled to some consideration.

Omaha & Council Bluffs Street Railway Company v. Interstate Commerce Commission, 230 U. S. 324.

The debates and statements of individual members of congress are not entitled to any consideration.

United States v. Trans-Missouri Freight Association, 166 U. S. 290.

Petitioner (*Petitioner's brief* pp. 12-24) has placed emphasis on certain statements taken from the reports of committees of congress, appointed to consider the means for establishing a system of rural credits and has inferred that the Farm Loan Act followed the plan of the National Bank Act, in consequence of which omission of certain express provisions found in the National Bank Act must imply an intent on the part of the congress to establish the opposite rule from that provided for by the National Bank Act.

Two such reports are considered by petitioner, to-wit: the report of the United States Commission appointed to investigate and study co-operative land mortgage banks in European countries, dated January 28, 1914 (Cong. Rec. Vol. 51, part 3, p. 2486 *et seq.*) and the report of the Sub-committee on Land Mortgage Loans to the Chairman of the Joint Committee on Rural Credits, dated January 4, 1916 (Cong. Rec. Vol. 53, Part 1, p. 452, *et seq.*). The bill mentioned in the report of the Sub-committee on Land Mortgage Loans is not printed in the Congressional Record but appears as part of the complete report appearing as

document 494 in Vol. 144 of House Documents, 64th Cong., 1st Session, 1915-1916.

In an effort to establish that the National Bank Act and the Federal Farm Loan Act are in *pari materia,* petitioner (*Petitioner's brief* p. 13) quoted part of a paragraph from the report of the United States Commission of 1914 as follows:

> "As against the central bank idea, the bill suggested by the commission affords competitive banking. It is founded on American models. *It is based, to a large extent, on the plan of our national banking system, changed as the commission deemed wise to overcome the difficulties which had theretofore been shown to attach to the national banking plan.*" (Ibid. p. 2490, 2nd column, 5th par.)

On the face of the quotation it would seem to imply that the receiver of a joint stock land bank was to have the same rather than less power than the receiver of a national bank.

However the whole report must be examined to reach any conclusion as to the structure of the Federal Farm Loan Act and this paragraph must be read in conjunction with the preceding paragraph of the report to determine its meaning. An examination of the complete report shows that the above statement, quoted by petitioner, appears under the heading "ADVANTAGES OF INDEPENDENT BANKS" following a paragraph headed "CENTRAL BANK VERSUS INDEPENDENT BANKS", in which the commission considered the merits of a system involving a central bank as contrasted with the so-called American system of unit banks, as provided by the National Bank Act, and the committee concluded, from its investiga-

tion, that the unit banking system was best suited to conditions in this country. It will be noticed that the commission does not say that the bill follows the National Bank Act but that it follows the national banking system, thus indicating, in accordance with the text, that *the commission was not speaking of the structure of the National Bank Act but of unit banks as distinguished from a central bank.*

That the bill submitted by the commission did not follow the structure of the National Bank Act on the point here under consideration, is conclusively demonstrated by Section 10 of the Act, which provides for the liquidation of banks as follows:

> Sec. 10 "That the commissioner of farm-land banks is authorized and empowered, upon proper application to issue charters or certificates of incorporation . . .; and to withdraw or forfeit such charters or liquidate such banks whenever necessary, in accordance with rules to be provided, subject in all respects to the requirements and provisions herein contained."

This provision for the liquidation of banks is much broader than that of the National Bank Act and is radically different in its structure. It will further appear from an examination of the full report of the committee and from the bill submitted therewith that the commission contemplated the vesting of much broader powers in the commissioner of farm-land banks provided for by the bill to supervise the Farm Loan system than are vested in the Comptroller of the Currency under the provisions of the National Bank Act.

A further review of the report of the commission will disclose the emphasis placed by the commission on

the need for bonds of absolute safety, exempt from taxation, as instrumentalities of the government and secured by the strict supervision of a government agency. Full weight could not be given to the provisions of the Act as finally enacted unless broad administrative powers were vested in the Farm Loan Board.

From August 1913 to March 4, 1916, more than sixty bills dealing with the matter of rural credits were introduced in Congress and from a consideration of these, together with the bill introduced by the United States Commission, above referred to, the Sub-committee on Land Mortgage Loans of the Joint Committee on Rural Credits filed its report on January 3, 1916, accompanied by a proposed rural credits bill in substantially the form, so far as the provisions here under consideration are concerned, as the Federal Farm Loan Act, when finally enacted. Because the form of the bill accompanying the report represents substantially the Federal Farm Loan Act as enacted, the report of the committee is of some significance (a) in so far as the bill submitted therewith purported to establish a Farm Loan Board and define the powers of that board; and (b) in so far as the objects sought in the legislation have a bearing on its purpose and consequent construction.

The report of the committee is summarized by the following paragraphs taken therefrom (Cong. Rec., Vol. 53, Part 1, pp. 452, 455; Committee Report appearing in Vol. 144 House Documents, 64th Congress, 1st Session 1915-1916, pp. 8, 17):

"PRIMARY CONSIDERATIONS.

The primary considerations in devising such a system are:

1. Absolute safety and attractive income to the investor.

2. Low interest rates, long-term mortgages, and amortization payments for the farmer.

3. *Low cost of administration.*

4. *Simplicity of organization and operation.*

5. *Adaptability to every part of the country.*

6. Stimulation to the co-operative spirit.

These details will be discussed after a general description of the plan.

GENERAL PLAN.

Government control of the system is assured by the creation of a Federal farm loan board, independent and non-partisan, consisting of five members, appointed by the President for terms of 10 years each and paid from the Public Treasury. . . .

. . . . . .

SUMMARY.

It is believed that the system of land banks outlined in the proposed bill affords a safe and attractive farm-loan bond for the investing public—low interest rates, long-term mortgages, and easy payments for the farmers; *low cost of administration; simplicity of organization and operation; adaptability to the needs of every*

section; and stimulation to the spirit of generous co-operation among farmers."

The above history of the Farm Loan Act clearly demonstrates the emphasis placed by the committees charged with framing the law upon simplicity of operation and uniformity and attractiveness of the bonds to the investor at low rates of interest. To the end of securing simplicity of operation, broad administrative powers were vested in the Farm Loan Board so that it might, by proper administrative control, fix such procedure as experience might determine best fitted for the economical administration of the various provisions of the Act.

The efforts of the Joint Committee on Rural Credits in this connection are best expressed in the summary of the committee's report above set forth.

Petitioner's brief (See pp. 49-50, 61) takes the tone that it was the deliberate purpose of the Congress to have the stockholders' liability enforced by creditors' suit. We can find no warrant whatever for this position. On petitioner's theory it is contradicted by the fact that the McLean Bill and Fletcher Substitute (§38) provided for incorporation in the Federal Farm Act of the same express provision found in the National Bank Act for creditors' suit on voluntary liquidation where no statutory receiver is appointed.

There is nowhere throughout the proceedings the slightest manifestation of any intention that the Congress, or any one of its members, intended this liability to be enforced by a separate judicial proceeding. On the contrary, the committee reports and de-

bates show throughout that the persons therein speaking regarded all of the bills proposed as fixing broad supervision in the body charged with the administration of the Act.

In contrast with the broad administrative powers vested in the Farm Loan Board under the Farm Loan Act and the consequent simplification of provisions for administration on insolvency, the National Bank Act exhibits a studied intent to vest the Comptroller of the Currency with limited powers. The first paragraph of the Act of February 25, 1863 (12 U. S. Stats. at Large 665) providing for a system of national banks, which section has been retained without substantial change, reads in part as follows:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That there shall be established in the Treasury Department a separate bureau, which shall be charged with the execution of this and all other laws that may be passed by Congress respecting the issue and regulation of a national currency secured by United States bonds. The chief officer of the said bureau shall be denominated the comptroller of the currency, and shall be under the general direction of the Secretary of the Treasury. He shall be appointed by the President, on the nomination of the Secretary of the Treasury, by and with the advice and consent of the Senate, and shall hold his office for the term of five years unless sooner removed by the President, . . ."

Under the Act of 1863 and the Act of June 3, 1864 (13 U. S. Stats. at Large 99) the Comptroller was permitted in many matters to act only with the concur-

rence of the Secretary of the Treasury and certain of such restrictions are still retained in the National Bank Act (12 U. S. Stats. at Large 665, §§2, 18, 26, 51; 13 U. S. Stats. at Large 99, §§1, 2, 7, 22, 24, 27, 47, 54).

No provision was made in either Act for the appointment of a receiver by the Comptroller other than upon default by the bank in the redemption of its circulating notes, and no general receivership provision was added until June 30, 1876 (19 U. S. Stats. at Large 63, June 30, 1876, §1).

Under such circumstances, the Congress might well have deemed it prudent affirmatively to specify that the receiver should enforce the stockholders' liability inasmuch as it might be doubtful from the provisions of the Act whether the Comptroller possessed the necessary administrative power to provide for such enforcement.

It is plain, therefore, that the powers of the Comptroller of the Currency are not to be compared with those of the Farm Loan Board and that the structure of the Farm Loan Act is so different from that of the National Bank Act as to make any inference from the phraseology of the one inapplicable to the other.

2.

Rejected Amendments.

Petitioner attempts (*Petitioner's brief* pp. 22, 23) to create the impression that the Congress considered and refused to amend Section 29, above quoted, so as to vest in the receiver of a joint stock land bank the same powers, duties and restrictions as a receiver ap-

pointed by the Comptroller of the Currency and to vest in the Farm Loan Board the same power over such receiver as the Comptroller of the Currency has over the receivers of national banking associations. An examination of the Congressional Record will disclose that both the McLean Bill (Bill S. 4944) and Fletcher Substitute, cited by petitioner, were referred to the Committee on Banking and Currency of the House of Representatives and, after hearings thereon, no further proceedings were taken with reference thereto in either the House or the Senate.

It is apparent from the provisions of Section 29, of the Farm Loan Act (U. S. C. §961), that such an amendment to the law as proposed by either of these Bills would greatly restrict the powers of the Farm Loan Board and its receiver. Whereas under the Act the property of the bank, both real and personal, may be sold on the approval of the Farm Loan Board, under the provisions of the McLean and Fletcher amendments such sales would require the approval of a court of competent jurisdiction. In view of the large amounts of foreclosed real estate held by joint stock land banks in receivership, the enactment of such an amendment would place a severe restriction on the efficient operation of the farm loan system.

Further, the mere introduction of such amendments in Congress ten years after the enactment of the original act and the failure of Congress to take any action whatsoever with reference to such amendments should be given no weight in interpreting the act.

Penn Mutual Company v. Lederer, 252 U. S. 523, 538.

United States v. Allen, 179 Fed. 13 (C. C. A. 8th Cir.).

Both of these Bills which failed contained express provision (McLean Bill (S 4944), §38, Fletcher Substitute, §38) for addition to the Farm Loan Act of the express provision of the National Bank Act for creditors' suit in equity to enforce the stockholders' liability in case of voluntary liquidation, yet petitioner does not question that, nonetheless, in the absence of any statutory officer to enforce the liability, such right to proceed in equity exists. (See *Petitioner's brief* pp. 60, 61.)

V.

The Joint Stock Land Banks are Constitutional Agencies of Government, and Their Administration Under the Direction and Control of the Federal Farm Loan Board Necessarily Implies a Single Receivership and Collection of the Personal Liability of Stockholders Under Direction and Control of the Board.

1.

Joint Stock Land Banks Were Created by the Congress to Serve as Fiscal Agents of the Government; They Were Created for Public and Not Private Purposes.

The constitutionality of the Federal Farm Loan Act was definitely established in *Smith v. Kansas City*

Title & Trust Company, 255 U. S. 180, 209, 210, 211, where the court held that the designation of joint stock land banks as depositaries of public money and authorization of their employment as financial agents of the Government brought them within the constitutional power of the Congress to facilitate the fiscal operations of the government and that whether technically banks or not, these organizations may serve the governmental purposes declared by the Congress for their creation.

In accord

Osborn v. Bank of the United States, 9 Wheat. 738, 860, 861.

Van Reed v. Peoples National Bank of Lebanon, 198 U. S. 554.

2.

Proper and Expeditious Administration of the Affairs of Joint Stock Land Banks is Essential to the Fiscal Policies of the Government.

The rule was early laid down that national banks as instruments designed to be used to aid the government are within the discretionary power of the Congress; and that the power of the Congress over these banks is exclusive.

Farmers & Mechanics' Natl. Bank v. Dearing, 91 U. S. 29, 33, 34.

The same principle applies to joint stock land banks.

3.

The Congress Intended to Continue Governmental Control Through Insolvency Proceedings.

No one disputes the necessity for supervision of joint stock land banks by the Federal Farm Loan Board prior to insolvency. If the Congress has deemed such supervision essential to furtherance of the fiscal policies of the Government while joint stock land banks are solvent, certainly the winding up and dissolution of such banks should be no less important in its effect upon such policies.

This principle was given effect in *Cook County National Bank v. United States,* 107 U. S. 445, 448, where the court considered whether a general statute giving a preference to the United States against insolvent debtors applied to insolvent national banks in the hands of statutory receivers, and held the provisions of the National Bank Act for administration of insolvent national banks to be exclusive, saying:

> [107 U. S. 448] "From the view we take of the act authorizing the formation of national banks, it is unnecessary to consider whether or not this position is tenable. We consider that act as constituting by itself a complete system for the establishment and government of national banks, prescribing the manner in which they may be formed, the amount of circulating notes they may issue, the security to be furnished for the redemption of those in circulation; their obligations as depositaries of public moneys, and as such to furnish security for the deposits, and

designating the consequences of their failure to redeem their notes, their liability to be placed in the hands of a receiver, and the manner, in such event, in which their affairs shall be wound up, their circulating notes redeemed, and other debts paid or their property applied towards such payment. Everything essential to the formation of the banks, the issue, security, and redemption of their notes, the winding up of the institutions, and the distribution of their effects, are fully provided for, as in a separate code by itself, neither limited nor enlarged by other statutory provisions with respect to the settlement of demands against insolvents or their estates."

See also

Boyd et al v. Schneider, et al., 131 Fed. 223, at 227 (C. C. A. 7th Cir. 1904).

4.

The Farm Loan Board's Powers are Exclusive.

Section 26 (U. S. C. §931) of the Federal Farm Loan Act provides in part:

(Sec. 26) ". . . First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

Section 27 (U. S. C. §941) provides:

(Sec. 27) "That farm loan bonds issued under the provisions of this Act by Federal land banks

or joint stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

On the face of the matter, a rather peculiar and unusual situation will result if it be held that, notwithstanding the fact that the Farm Loan Act provides for the administration of the Act, including the provisions for insolvency, by the Federal Farm Loan Board, such Board cannot provide for enforcement of the stockholders' double liability, thus completely to satisfy the principal obligations of the insolvent bank provided by one provision of the Act to be instrumentalities of the government and by another, as a special inducement to investors, expressly made lawful investments for all fiduciary and trust funds and security for all public deposits.

We submit that the Congress necessarily must have intended to vest in the Farm Loan Board the authority completely to administer the affairs of the bank, including the stockholders' double liability, so that these obligations, defined by the law as instrumentalities of the government and by it made legal investments for trust funds and security for public deposits, might be finally liquidated.

On principle, therefore, it seems essential to preservation of the constitutional purpose of joint stock land banks to assist in the fiscal operations of the government that the courts refuse to interfere with the officers of the government vested with the administrative authority to supervise and direct these agencies and to direct and control the administration of the Act.

In *Krauthoff v. Kansas City Joint Stock Land Bank et al.*, 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927) the court said:

> [23 Fed. (2d) 73] "The bank was a federal agency. Smith v. Kansas City Title Co., 255 U. S. 180, 41 S. Ct. 243, 65 L. Ed. 577. The Act under which it was created and authorized to transact business, subject to the supervision and control of the board, prescribes, as we view it, the way in which it should be wound up in the case of insolvency. For that purpose the board took charge of it, as does the Comptroller of an insolvent national bank. A receiver appointed by the board is a public officer, as much so as a receiver appointed by the Comptroller. United States v. Weitzel, 246 U. S. 533, 38 S. Ct. 381, 62 L. Ed. 872. At the time these suits were brought the board through its receiver was in possession discharging the duty imposed upon it by Congress. We think we have no right to interfere in its discharge of that duty. Early in the administration of the National Banking Act it was contended that the Comptroller, an executive officer, was, in discharging his duties, attempting to exercise judicial functions which belonged exclusively to the courts. The contention was held to be without merit. See Bushnell v. Leland, 164 U. S. 684, 17 S. Ct. 209, 41 L. Ed. 598. That seems to us to be the substance of the contention here."

In similar cases involving the administration of insolvent national banks the courts have held the administrative machinery established by Congress to be exclusive.

> *Liberty National Bank of South Carolina v. McIntosh*, 16 Fed. (2d) 906, 909-10 (C. C. A. 4th Cir. 1927).

Gockstetter v. Williams, 9 Fed. (2d) 354, 356 (C. C. A. 9th Cir. 1925).

Altman v. McClintock, 20 Fed. (2d) 226, 229, 231 (Dist. Ct., Dist. of Wyo. 1927).

The rule, vesting exclusive administrative authority in the statutory officer or body charged with the administration of a law, has been applied generally to federal administrative officers and boards.

Loomis v. Lehigh Valley Railroad Company, 240 U. S. 43, 50 (Interstate Commerce Commission).

Central Trust Company v. Central Trust Company of Illinois, 216 U. S. 251 (Postmaster General).

Decatur v. Paulding, 14 Pet. 497, 515. (Administration of pension fund by Secretary of the Navy).

Cosmos Exploration Company v. Gray Eagle Oil Company, 190 U. S. 301 (Administration of the forest reserve act by the Land Department).

Texas and Pacific Railway Company v. Abilene Cotton Oil Company, 204 U. S. 426. (Interstate Commerce Commission).

United States ex rel Ness v. Fisher, 223 U. S. 683, 693 (Secretary of the Interior).

5.

The Stockholders' Liability is to be Applied with and in Aid of the Assets of the Bank toward the Satisfaction of its Obligations.

As above set forth, we believe it clear that the Federal Farm Loan Act intends its administration to be under the exclusive direction and control of the Federal Farm Loan Board. Such exclusive direction and control in the case of insolvency of a joint stock land bank necessarily imports that the Farm Loan Board should have exclusive direction of the means of providing payment of the Bank's obligations. This inclusion is emphasized by the fact that the great mass of every joint stock land bank's obligations necessarily are its bonds which are provided for specially and in detail by the Farm Loan Act and are defined as instrumentalities of the government. (F. L. A. §§16, 18, 19, 20, 21, U. S. C. §§814; 816-821; 841-864.)

As stated by this court with reference to the similar stockholders' liability of national banks in *Richmond v. Irons,* 121 U. S. 27, 50: "Admitting that this liability (of stockholders) is not strictly an asset of the bank, . . . yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank toward the satisfaction of its obligations."

The case of *McNeill v. Pace,* 69 Fla. 349; 68 So. 177, (1915), evidences the tendency of the courts where the statute permits of such a construction to hold that a statutory receiver may enforce the stockholders' personal liability.

6.

Purpose Indicated in Heading of Section 29 of Act.

Section 29 of the Farm Loan Act (U. S. C. §961) is designated as providing for "Dissolution and Appointment of Receivers." An examination of Section 29 discloses the purpose of the appointment of a receiver to be the winding up and dissolution of the corporation. From this it would seem to follow that an interpretation which authorizes the Farm Loan Board completely to administer the affairs of the bank should be favored over one which requires enforcement of the stockholders' personal liability and distribution of the assets of the bank in a separate proceeding instituted by creditors in a court of equity.

Krauthoff vs. Kansas City Joint Stock Land Bank et al., 23 Fed. (2d) 71 (C. C. A. 8th Cir. 1927).

Wilson et al. v. Book et al., 13 Wash. 676; 43 Pac. 939 (*supra* p. 15).

In *State ex rel Stone v. Union Stock Yards, etc. Bank et al.*, 103 Ia. 549, 70 N. W. 752, the court, in holding that a statutory receiver appointed to wind up the affairs of a bank could enforce its stockholders' liability, said:

> [70 N. W. 755] " . . . . It is also to be said that chapter 208, giving rise to this liability of stockholders, is made, by its terms, a part of the general incorporation law under which the defendant bank was organized. That law contains the provisions under which the state, on the relation

of the attorney general, is to commence such suits to wind up such corporations, and all its provisions are to be construed together. It would seem like a strange and uncalled for state of affairs for the suit, at the instance of the state, to proceed until the assets of the bank were exhausted, and then subject the creditors to delays, and the annoyance of another like suit, at their own instance, to collect and distribute this fund. See, for a case in point and quite fully considered, Wilson v. Book (Wash.) 43 Pac. 939. See also, Watterson v. Masterson (Wash.) 46 Pac. 1041. We reach the conclusion that the assessment is not invalid because of a want of authority for a receiver, in case of a valid assessment, to collect and distribute the fund under orders of the court."

The language of the court in the above case is similar to that of this court in *Richmond v. Irons*, 121 U. S. 27, where the court said:

[121 U. S. 49-50] "In the case of involuntary liquidation under the supervision of the Comptroller of the Currency, the receiver appointed by him is authorized and required, not only to collect and apply the proper assets of the bank to the payment of its debts, but also, so far as may be necessary, to enforce the individual liability of the shareholders. It thus appears that the enforcement of this liability is a part of the liquidation of the affairs of the bank; at least, so closely connected with it as to constitute but one continuous transaction. When, in the case of voluntary liquidation, the proceeding is instituted by one or more creditors for the benefit of all, by means of the jurisdiction of a court of equity, there seems to be no reason why the nature of the proceeding should be considered as changed. The intention of Congress evidently was to provide ample and effective remedies in all the specified cases for the protection of the

public and the payment of creditors, by the application of the assets of the bank and the enforcement of the liability of the stockholders. Admitting that this liability is not strictly an asset of the bank, because it could not be enforced for its benefit as a corporation nor in its name, yet it is treated as a means of creating a fund to be applied with and in aid of the assets of the bank towards the satisfaction of its obligations. The two subjects of applying the assets of the bank and enforcing the liability of the stockholders, however otherwise distinct, are by the statute made connected parts of the whole series of transactions which constitute the liquidation of the affairs of the bank. . . ."

See also—

King, et al. v. Armstrong, 50 Ohio State 222; 34 N. E. 163.

Hynes v. Illinois Trust & Savings Bank, et al., 226 Ill. 95; 80 N. E. 753; 10 L. R. A. (N. S.) 472.

7.

Payment of Assessments without Suit should be Possible.

Certainly, there should be some place where a stockholder can pay the assessment without suit, and the logical person for this purpose and for the enforcement of the liability is the statutory receiver, appointed by the Federal Farm Loan Board.

8.

Right of Offset against Dividends on Bonds held by Stockholders should be Preserved.

Further, if the Farm Loan Board is not the proper party to administer the stockholders' liability, then the right to offset dividends on bonds or other claims in the hands of stockholders may be lost.

VI.

Petitioner's Construction of the Farm Loan Act, if Adopted, Will Involve Duplication of Receivership, Together With Increased Expense and Delay, and Will Necessitate Ancillary Equity Suits in Thirty States.

The Congress could not have intended so unreasonable an interpretation.

Petitioner attempts, by a comparison of the provisions of the Farm Loan Act with those of the National Bank Act, to establish a congressional intention that the Farm Loan Board shall be responsible for reducing to cash all the assets and liabilities of every insolvent bank, and that if those prove insufficient to satisfy all claims, the creditors must then resort to a separate proceeding in a court of equity for enforcement of their stockholders' liability. (*Petitioner's brief*, p. 65.)

Petitioner's brief thus assumes that the Congress intended to make the creditors of the bank bear the expense of a double receivership.

This suggested interpretation of the Farm Loan Act, showing a complete disregard of the broad administrative powers vested in the Farm Loan Board, is expressly contrary to the principles governing the liquidation of such institutions established in *Kennedy v. Gibson*, 8 Wall. 498, 505 (*supra* pp. 25-26) and *Korbly, Receiver, v. Springfield Institution for Savings, et al.*, 245 U. S. 330, 333.

The expense of an additional receivership in itself seems controlling on the question of intention.

The duplication of procedure and expense seems an absurdity inasmuch as the Receiver appointed by the Farm Loan Board is an officer of the United States subject to the order of the Board and represents creditors as well as the corporation.

Under the provisions of Section 29 of the Farm Loan Act (U .S. C. §§961, 962, 963), such receiver:

(1) Executes bond to the United States for the faithful performance of his duties;

(2) Assumes control as an officer of the United States:
United States v. Weitzel, 246 U. S. 533, 540, 541.
Krauthoff v. Kansas City Joint Stock Land Bank, et al., 23 Fed. (2d) 71, 73.
Steele v. Randall, 19 Fed. (2d) 40, 42.

(3) Pays all moneys collected to the Treasurer of the United States *"subject to the order of the Federal Farm Loan Board."*

(4) Represents creditors as well as the corporation:
Kennedy v. Gibson, 8 Wall. 498, 506.

In addition to the double receivership, it will be necessary, if the Farm Loan Board is without authority to administer the stockholders' personal liability, to have ancillary proceedings in more than thirty states in order that the liability may be enforced.
Great Western Mining Co. v. Harris, 198 U. S. 561, 574.

The difficulties and expense incident to the enforcement of the stockholders' personal liability by a court receiver are illustrated by the history of attempted enforcement by such a receiver in Minnesota.
Hale v. Allinson, 188 U. S. 56, 65.

In the light of the above authorities illustrating the complicated and expensive procedure necessary to enforce the stockholders' personal liability through a court receiver, it is plain that the Congress could not have intended to burden the creditors of insolvent joint stock land banks:

(a) with the expense of two receiverships,

(b) with the expense and uncertainty of ancillary proceedings,

(c) With the delay incident to appointment of a court receiver in a case where a governmental board, with broad administrative powers, acquainted with the facts and competent to determine claims and enforce the stockholders' liability, has appointed a receiver who is engaged in liquidating the affairs of the bank, and

(d) with the uncertainty, delay and expense arising out of the necessity for a creditor applying to a court for the appointment of a judicial receiver to continue the liquidation following sequestration of the assets of the bank by its statutory receiver.

As stated by the Circuit Court of Appeals for the Eighth Circuit in *Krauthoff v. Kansas City Joint Stock Land Bank et al.*, 31 Fed. (2d) 75:

> [31 Fed. (2d) 78] ". . . It is hardly to be presumed that Congress intended in carrying out the purposes of this Act to have various receivers for different kinds of assets, resulting merely in inextricable confusion and chaos. The Act should be carried out according to its terms and not lose its efficiency in a maze of philosophical technicalities. It seems to us the Act is perfectly plain, that the Farm Loan Board is charged with carrying out its provisions and to see 'that the moneys are applied toward the satisfaction of the bonds.' "

This conclusion also conforms to the fact that the Farm Loan Act had among its "primary considerations," "low cost of administration" and "simplicity of organization and operation" (Cong. Rec. Vol. 53 Part 1, p. 452; *Supra* pp. 37-38).

The interpretation suggested by counsel for the petitioner would ignore the rule that all laws are to be given a sensible construction and that where a literal application of a statute would lead to absurdity or where a particular construction of a statute would occasion great inconvenience or produce inequality and injustice, that view is to be avoided if a reasona-

ble interpretation can be given to it consistent with the legislative purpose.

United States v. Katz, 271 U. S. 354, 357.
Knowlton v. Moore, 178 U. S. 41, 77.

VII.

Construction of Act by Farm Loan Board.

The construction here maintained by the respondent is that adopted by the Federal Farm Loan Board (Rec. p. 4) and such construction should be given great weight, particularly where, as in this case, administration of the law is under "the direction and control" (Farm Loan Act §1 U. S. C. §641) of the Board, the Board is charged with execution of the Act and broad, supervisory and incidental powers are vested in it.

Federal Farm Loan Act, §§1, 3, 17 (i) and (j) 29. (U. S. C. §§641, 651, 831 (i) and (j), 961 and 962).

This court will, if possible, follow the construction placed on a statute by the department of the government charged with its administration.

Jacobs v. Prichard, 223 U. S. 200, 213.
U. S. v. Cerecedo Hermanos y Cia, 209 U. S. 337.
Swigart v. Baker, 229 U. S. 187.
Blanset v. Cardin, 256 U. S. 319.
National Lead Co. v. U. S., 252 U. S. 140.

VIII.

Cases Cited by Petitioner.

1.

Cases on Stockholders Liability Arising Under State Statutes are Practically Irreconcilable and are not Controlling here.

In none of the cases under State statutes cited by petitioner *(Petitioner's brief* p. 49) was there a governmental board charged with the administration of the act and vested with the broad powers of the Farm Loan Board.

Fundamentally in cases arising under state laws the essential question always is the scheme intended by the legislature; in other words, what liability did the legislature intend to create and what remedy did the legislature intend therefor?

Terry v. Little, 101 U. S. 216, 217.

In considering decisions under state laws, the peculiar phraseology of the state act must be kept in mind, such as whether the liability is "to creditors" or "for debts", etc., and what, if any, remedy the state statutes provide, expressly or impliedly.

Wilson, et al. v. Book, et al., 13 Wash. 676; 43 Pac. 939.

See also *Patterson v. Lynde,* 106 U. S. 519.

Where the law fails to provide for a statutory receiver to administer the affairs of the insolvent corpo-

ration, a proceeding by creditors' bill necessarily is the only available remedy and the authorities so holding are not in point here.

Richmond v. Irons, 121 U. S. 27.

A statutory receiver "to close up the affairs of the company" has been held to have power to enforce the double liability under language similar to that here.

McNeill v. Pace, 69 Fla. 349; 68 So. 177.

In accord:

Wilson, et al., v. Book, et al., 13 Wash. 676, 43 Pac. 939.

This is so, even where the liability is "to creditors".

State ex rel. Stone v. Union Stock Yards, etc., Bank et al., 103 Ia. 549, 70 N. W. 752, 753.

In cases arising under state statutes, the federal courts deal with the matter as the construction of a state statute and follow the state rules, and that is the first point for consideration.

Terry v. Little, 101 U .S. 216, 217.

The controlling governmental interest in administration present in the case of constitutional agencies of the Government, such as joint stock land banks, is not present in the case of ordinary corporations formed under general state laws. Every presumption should be in favor of complete administration by the Government where, as in this case, such administration is obviously in furtherance of the constitutional purpose.

2.

The Cases on Statutory Construction Cited by Petitioner are Inapplicable to this Case.

The petitioner cites a large number of cases on principles of statutory construction and particularly refers to what he calls the "it would have been easy to say so" rule (*Petitioner's brief* pp. 41-45). That, however, is not a requirement that statutes cannot be in general form or must expressly specify every detail, but at most, that implications therein shall not be inconsistent or out of harmony with the rest of the enactment. This, for instance, was the case in *United States v. Chase,* 135 U. S. 255, 259, where the general term "writing", used in connection with books, pamphlets, etc., in a mail regulation, was held not to include a sealed letter, particularly in view of other language in the Act; and in *Baltimore etc. Railroad Company v. Grant,* 98 U. S. 398, 403, the court used this phrase to show that in the statute the "language employed should have its usual and ordinary signification". On the contrary, the main argument of the petitioner is directed merely to the proposition that, because another statute (the National Bank Act adopted 52 years earlier) contains express provision with regard to enforcement of liability by the receiver, the statute here involved should not be held to include such power unless expressly set forth notwithstanding the scope of the general powers vested in the Board charged with its administration. We have hereinbefore discussed in detail the considerations controlling construction in the case at bar.

Further while it is not necessary to go so far in the case at bar, it should be noted that the rule referred to by the petitioner is subject to limitations set forth in the very cases cited in his brief.

In *United States v. Goldenberg*, 168 U. S. 95, 103, immediately preceding and following the language quoted in the petitioner's brief, it is said:

> [168 U. S. 103] " . . . It is true there are cases in which the letter of the statute is not deemed controlling, but the cases are few and exceptional, and only arise when there are cogent reasons for believing that the letter does not fully and accurately disclose the intent . . . In the case at bar the omission to make specific provision for the time of payment does not offend the moral sense; *Holy Trinity Church v. United States*, 143 U. S. 457; it involves no injustice, oppression or absurdity, *United States v. Kirby*, 7 Wall. 482; *McKee v. United States*, 164 U. S. 287 . . ."

It is clear that petitioner's interpretation of the rule "it would have been easy to say so" if applied to administrative bodies would limit their powers beyond any reasonable intent of the Congress. See for instance:

Knight v. United States Land Association, 142 U. S. 161, 181.

United States v. Bailey, 9 Pet. 238, 255.

Cosmos Exploration Company v. Gray Eagle Oil Company, 190 U. S. 301, 309.

Catholic Bishop of Nesqually v. Gibbon, 158 U. S. 155, 166.

Further applied to the very statutes here discussed petitioner's rule is contradicted by the fact that al-

though the National Bank Act (U. S. C. §192) expressly provides for the Comptroller directing a receiver in the collection of debts of the bank, etc., and in the very same section omits any such provision as to the receiver enforcing the stockholder's liability (See *supra* pp. 24-25), yet the Comptroller has been held to have the power to levy a conclusive assessment on the stockholders.

Kennedy v. Gibson, 8 Wall. 498, 505 and other cases cited *(supra* p. 25).

CONCLUSION.

The whole argument of the petitioner reduces itself to an attempted inference from the omission in the Farm Loan Act, adopted in 1916, of the express provision for enforcement of the stockholders liability set forth in the National Bank Act adopted in 1864. The argument overlooks the fact that even under the National Bank Act the Comptroller's power of assessment of this liability is implied; it disregards the difference in structure of the acts; it ignores the broad general powers given to the Farm Loan Board which are not given to the Comptroller; and it gives no weight to the confusion, delay and waste that would result from this construction.

No reasonable construction of the Act can justify a second receivership; the existence of the statutory receiver acting under the direction of the Farm Loan Board vested by statute with the broadest powers of administration and liquidation necessarily excludes any possibility of an accompanying judicial receivership. The Congress certainly could not have intended

so peculiar or unusual a result; on the contrary the intention of the Act is plain to vest in the Farm Loan Board the power to assess the stockholders' statutory liability and to have it collected through the receiver appointed by the Board.

We respectfully submit that the judgment of the Circuit Court of Appeals should be affirmed.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,
Counsel for Respondent.

APPENDIX.

STATUTES.

FEDERAL FARM LOAN ACT.

The enacting clause of the Federal Farm Loan Act provides in part:

"An act . . . to furnish a market for United States bonds, to create Government depositaries and financial agents for the United States, and for other purposes."

Section 1 of the Act (U. S. C. §641) provides:

"That this Act may be cited as the 'Federal Farm Loan Act'. *Its administration shall be under the direction and control of the Federal Farm Loan Board hereinafter created.*" [Italics ours.]

Section 3 of the Act (U. S. C. §651) provides:

"That there shall be established at the seat of government in the Department of the Treasury a bureau *charged with the execution of this Act* and of all Acts amendatory thereof, to be known as the Federal Farm Loan Bureau, under the general supervision of a Federal Farm Loan Board." [Italics ours.]

Section 16 of the Act (U. S. C. §812) provides:

"Shareholders of every joint stock land bank organized under this Act shall be held indi-

vidually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such bank to the extent of the amount of stock owned by them at the par value thereof, in addition to the amount paid in and represented by their shares."

Section 17 of the Act (U. S. C. §831) provides in part:

"That the Federal Farm Loan Board shall have power—. . .

"(i) To exercise *general supervisory authority* over the Federal land banks, the national farm loan associations, and the joint stock land banks herein provided for. [Italics ours.]

"(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and carry out the purposes of this Act."

Section 26 of the Act (U. S. C. §931) provides:

". . . First mortgages executed to Federal land banks, or to joint stock land banks, and farm loan bonds issued under the provisions of this Act, shall be deemed and held to be instrumentalities of the Government of the United States, and as such they and the income derived therefrom shall be exempt from Federal, State, municipal, and local taxation."

Section 27 of the Act (U. S. C. §941) provides:

"That farm loan bonds issued under the provisions of this Act by Federal land banks or joint

stock land banks shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits."

Section 29 of the Act provides in part:

[U. S. C. §961] "Upon receiving satisfactory evidence that any national farm loan association has failed to meet its outstanding obligations of any description the Federal Farm Loan Board may forthwith declare such association insolvent and appoint a receiver and require of him such bond and security as it deems proper: Provided, That no national farm loan association shall be declared insolvent by said board until the total amount of defaults of current interest and amortization installments on loans indorsed by national farm loan associations shall amount to at least $150,000 in the Federal land bank district, unless such association shall have been in default for a period of two years. *Such receiver, under the direction of the Federal Farm Loan Board,* shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, *with the approval of the Federal Farm Loan Board* or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, *and, on a like approval or order,* may sell all the real and personal property of such association *on such terms as the Federal Farm Loan Board* or said court shall direct." [Italics ours.]

[U. S. C. §962] "Such receiver shall pay over all money so collected to the Treasurer of the United States *subject to the order of the Federal Farm Loan Board* and also make report to said board of all his acts and proceedings. The Secretary of the Treasury shall have authority to deposit at interest any money so received." [Italics ours.]

[U. S. C. §963] "Upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding national farm loan associations."

[U. S. C. §965] "No national farm loan association, Federal land bank or joint stock land bank shall go into voluntary liquidation without the written consent of the Federal Farm Loan Board, but national farm loan associations may consolidate under rules and regulations promulgated by the Federal Farm Loan Board."

NATIONAL BANK ACT.

"An Act to provide a national currency secured by a pledge of United States bonds, and to provide for the circulation and redemption thereof." (13 U. S. Stats. at Large June 3, 1864.)

U. S. C. Sec. 1. "There shall be in the Department of the Treasury a Bureau charged with the execution of all laws passed by Congress relating to the issue and regulation of a national currency secured by United States bonds and, under the general supervision of the Federal Reserve Board, of all Federal reserve notes, the chief officer of which bureau shall be called the Comptroller of the Currency and shall perform his duties under the general directions of the Secretary of the Treasury."

U. S. C. Sec. 21. "Associations for carrying on the business of banking under this chapter may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the association may see fit to adopt for the regulation of its business and the conduct of its affairs. . . ."

U. S. C. Sec. 63. "The shareholders of every national banking association shall be held individually responsible, equally and ratably, and not one for another, for all contracts, debts, and engagements of such association, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares."

U. S. C. Sec. 64. "The stockholders of every national banking association shall be held individually responsible for all contracts, debts, and engagements of such association, each to the amount of his stock therein, at the par value thereof in addition to the amount invested in such stock. . . ."

U. S. C. Sec. 65. "When any national banking association shall have gone into liquidation under the provisions of Section 181 of this title, the individual liability of the shareholders provided for by Section 63 of this title may be enforced by any creditor of such association, by bill in equity, in the nature of a creditor's bill, brought by such creditor on behalf of himself and of all other creditors of the association, against the shareholders thereof, in any court of the United States having original jurisdiction in equity for the district in which such association may have been located or established."

U. S. C. Sec. 66. "Persons holding stock as executors, administrators, guardians, or trustees, shall not be personally subject to any liabilities as stockholders; but the estates and funds in their hands shall be liable in like manner and to the same extent as the testator, intestate, ward, or person interested in such trust funds would be, if living and competent to act and hold the stock in his own name."

U. S. C. Sec. 181. "Any association may go into liquidation and be closed by the vote of its shareholders owning two-thirds of its stock."

U. S. C. Sec. 191. "Whenever any national banking association shall be dissolved . . . or whenever any creditor of any national banking association shall have obtained a judgment against it in any court of record and made application, accompanied by a certificate . . . stating that such judgment has been rendered and has remained unpaid for the space of thirty days, or whenever the comptroller shall become satisfied of the insolvency of a national banking association, he may . . . in either case, appoint a receiver who shall proceed to close up such association, and enforce the personal liability of the shareholders, as provided in Section 192."

U. S. C. Sec. 192. "On becoming satisfied, as specified in Sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the comptroller of the currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every description of such association, collect all debts, dues and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all

bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller, and also make report to the comptroller of all his acts and proceedings.

"Provided, that the comptroller may, if he deems proper, deposit any of the money so made in any regular Government depositary, or in any state or national bank either of the city or town in which the insolvent bank was located, or of a city or town as adjacent thereto as practicable; if such deposit is made he shall require the depositary to deposit United States bonds or other satisfactory securities with the Treasurer of the United States for the safekeeping and prompt payment of the money so deposited. Such depositary shall pay upon such money interest at such rate as the comptroller may prescribe, not less, however, than 2 per centum per annum upon the average monthly amount of such deposits."

U. S. C. Sec. 193. "The comptroller shall, upon appointing a receiver, cause notice to be given, by advertisement in such newspapers as he may direct, for three consecutive months, calling on all persons who may have claims against such

association to present the same, and to make legal proof thereof."

U. S. C. Sec. 194. "From time to time, after full provision has been first made for refunding to the United States any deficiency in redeeming the notes of such association, the comptroller shall make a ratable dividend of the money so paid over to him by such receiver on all such claims as may have been proved to his satisfaction or adjudicated in a court of competent jurisdiction, and, as the proceeds of the assets of such association are paid over to him, shall make further dividends on all claims previously proved or adjudicated; and the remainder of the proceeds, if any, shall be paid over to the shareholders of such association, or their legal representatives, in proportion to the stock by them respectively held."

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CHARLES ELMORE

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 39

J. R. WHEELER, *Petitioner,*
against
HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Motion for Leave to File Brief as Amici Curiae.

And Proposed Brief as Amici Curiae.

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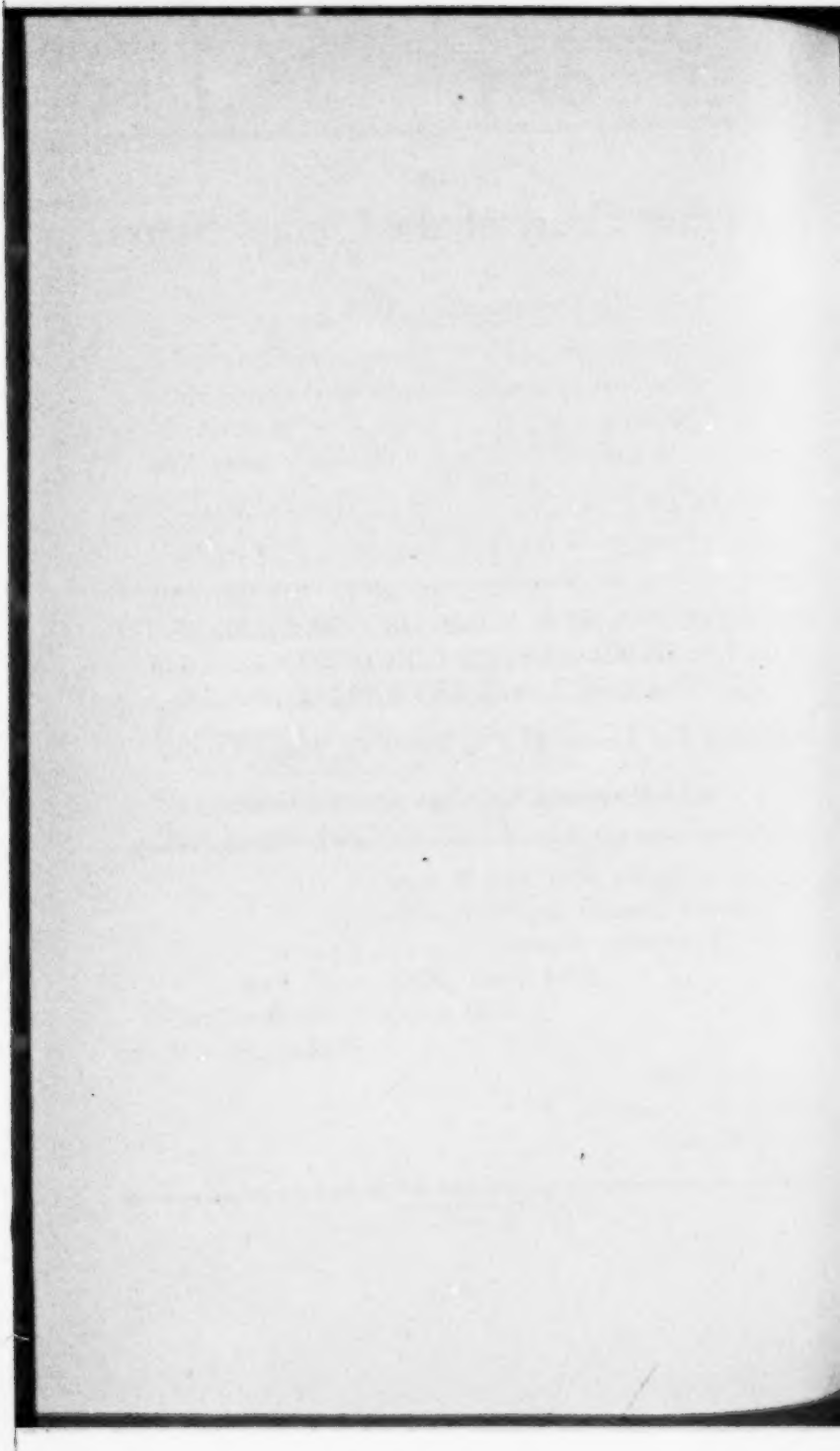

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National Banking Act (Rev. Stats. 5234 as amended; U. S. C. Title 12, section 192)..... 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

J. R. WHEELER,
Petitioner,
against
HOWARD GREENE, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin,
Respondent.
No. 711.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Motion for Leave to File Brief as Amici Curiae.

The undersigned, as counsel for the Stockholders' Protective Committee of the Kansas City Joint Stock Land Bank, respectfully move this Court for leave to file herein, as *amici curiae,* the annexed brief, and pray this Court to receive and consider the same and to grant the petition for certiorari in this cause, in order that the important and novel question of law which is presented by this cause, and which directly affects the interests of their clients, may be authoritatively settled by a decision of this Court.

Counsel for both the petitioner and the respondent have expressed their consent to the presentation of the annexed brief.

KENEFICK, COOKE, MITCHELL & BASS,
General Counsel for the Stockholders' Protective Committee of the Kansas City Joint Stock Land Bank,
1330 Marine Trust Building,
Buffalo, New York.

Lyman M. Bass
Porter R Chandler
Of Counsel

At the request of counsel for the respondent, and as the basis for securing his consent to the presentation of the annexed brief, the undersigned desire further to state that the Stockholders Protective Committee of the Kansas City Joint Stock Land Bank is giving financial assistance in the petition for *certiorari* herein. In view of the direct and vital interest of our clients in the outcome of this case, the undersigned are very glad to make such a statement.

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General Counsel for the Stockholders' Protective Committee of the Kansas City Joint Stock Land Bank,
1330 Marine Trust Building,
Buffalo, New York.

LYMAN M. BASS,
PORTER R. CHANDLER,
of Counsel.

BRIEF AS AMICI CURIAE.

The Question Presented.

The petition in this case seeks to bring up for review a decision of the Seventh Circuit Court of Appeals (reported in 29 F. (2nd) 468), which reversed a decision of the United States District Court for the Eastern District of Wisconsin. No opinion was rendered by the District Court.

The case presents a single question of law, namely:

Can a receiver, appointed by the Federal Farm Loan Board to take charge of the assets of an insolvent Joint Stock Land Bank, bring an action to enforce the double liability imposed by law upon the stockholders of the bank?

The District Court in this case, accepting the arguments of the petitioner, held that the receiver had no power to bring such an action, that power not having been conferred upon him by statute. The Circuit Court of Appeals held that he had such power, deriving it by implication from general phrases in the Federal Farm Loan Act. (Act of July 17, 1916, c. 245, 39 Stat. 360, U. S. C. Title 12, S. 641 and following).

Statement.

In this brief, we do not seek to add to the careful exposition of the law set forth in the petitioner's brief. We desire only to indicate, as briefly as possible, the reasons why this case is of such importance that this Court should grant the petition and enable the case to be decided on the merits.

By the Federal Farm Loan Act of 1916, (U. S. C. Title 12, S. 641 and following), Congress established a system of

joint stock land banks, under Federal supervision, for the purpose of extending credit to farmers throughout the country. The name "banks" is perhaps a misnomer, as these institutions are specifically forbidden to receive deposits or to engage in ordinary banking business, their functions being practically confined to loaning money on first mortgages on agricultural land. The stock of such banks, however, bears a double liability, similar to that of other bank stocks, *i. e.* in case of insolvency the stockholders are individually liable for the debts of the bank in an amount not exceeding the par value of their stock.

There are now in existence approximately fifty such joint stock land banks, their spheres of operation covering practically every part of the country. Three of them are now insolvent and are in the hands of receivers appointed by the Federal Farm Loan Board. These three include:

(i) The Kansas City Joint Stock Land Bank of Kansas City, Missouri. This bank has been in the hands of a receiver since May, 1927, and was, at the time of the receivership, the *second largest* bank in the system, with assets and liabilities each in excess of $45,000,000.00.

This *amici curiae* brief is filed on behalf of the Stockholders Protective Committee of this bank.

(ii) The Bankers Joint Stock Land Bank of Milwaukee. This has been in the hands of a receiver since July, 1927, and had assets and liabilities each in the neighborhood of $15,000,000.00.

The case at bar arises from an attempt by the receiver of this bank to collect from a stockholder the double liability on his stock.

(iii) The Ohio Joint Stock Land Bank of Cincinnati. This bank (much smaller than the other two) has been in the hands of a receiver since September,

1927, and had assets and liabilities in the neighborhood of $1,500,000.00.

Importance of This Case.

The Federal Farm Loan Act gives certain enumerated powers to the receiver of an insolvent joint stock land bank, who is appointed by the Federal Farm Loan Board and not by the Court. These powers are copied almost *verbatim* from the powers given to the receiver of a national bank (who is appointed by the Comptroller of the Currency) by U. S. C. Title 12, S. 192, *with the significant and deliberate omission* of the power to enforce the double liability of the stockholders. The receiver of a national bank is specifically given that power by U. S. C. Title 12, S. 192; but the Federal Farm Loan Act is wholly silent on the subject as regards the receiver of a joint stock land bank.

The powers of a receiver of an insolvent joint stock land bank are set forth in Section 29 of the Federal Farm Loan Act (Act of July 17, 1916, c. 245, 39 Stat. 360, 381) now embodied in U. S. C., Title 12, SS. 961 and 963. The corresponding powers of the receiver of a national bank are found in the National Banking Act, (R. S. 5234, as amended, now embodied in U. S. C. Title 12, S. 192).

A comparison of the two statutes will serve to illustrate our point.

National Banking Act (U. S. C. Title 12, S. 192)	Federal Farm Loan Act (U. S. C. Title 12, S. 961; cf. S. 963)
Such receiver, under the direction of the COMPTROLLER, shall take pos-	Such receiver, under the direction of the FEDERAL FARM LOAN BOARD,

session of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, on a like order, may sell all the real and personal property of such association, on such terms as the court shall direct; *and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders.* (Italics ours).

shall take possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, with the approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and on a like approval or order, may sell all the real and personal property of such association, on such terms as the Federal Farm Loan Board or said court shall direct.

The omission from the Federal Farm Loan Act of the power to enforce the double liability of the stockholders is, we submit, of vital importance in this case.

The question is not as to the existence of the stockholders' double liability, but as to the authority of the receiver to enforce it. The petitioner contends (and the District Court accepted his contention) that this double liability can only be enforced by the established machinery of a court of equity, through a creditors' bill or some similar procedure, and can *not* be enforced by a receiver appointed by the Farm Loan Board.

The distinction is, of course, important. The existence of a debt may be admitted; but in case of dispute, the debtor

is none the less entitled to know whom he is bound to pay, and when and how payment is to be made. If the receiver should collect the assessment and it should afterwards be held by the courts that he had no right to receive it, it is at least doubtful whether the unfortunate stockholders might not be forced to pay their assessments all over again in a suit on a creditors' bill.

But this is not the only practical distinction. If the stockholders' double liability is assessed and collected through the recognized medium of a creditors' bill, the stockholder has his day in court and can be heard on the two vital questions: (a) whether or not there should be any assessment at all; and (b) what the amount of that assessment should be. If the assessment, on the other hand, is made by the Farm Loan Board, through its receiver, the stockholder has no day in court at all. The *fiat* of the receiver is conclusive both as to the necessity for an assessment and as to its amount.

The power to levy such an assessment involves the highest degree of trust and the most careful exercise of discretion. A court of equity, on a creditors' bill, hears and considers evidence as to the value of the assets, the amount of the liabilities, and the extent of the deficit. The Board's receiver, on the other hand, (assuming that he has the power to levy assessments), is not required to consider any evidence at all. If he does, the weight and sufficiency of such evidence lie apparently within his uncontrolled discretion.

We submit, therefore, that Congress acted with full knowledge and deliberation when it omitted to give this power in specific terms to the Board's receiver. That omission, we believe, clearly shows that Congress desired

to give the stockholder his day in court according to the well-established and well-understood procedure of a creditors' bill. The opposing argument must of necessity be based (as was the decision of the Circuit Court of Appeals in this case) only on inferences and implications. It is inconceivable that this important power, so noticeably absent from the specific language of the Act, should be held to have been conferred by implication only.

What has just been said will serve to indicate a few of the more important questions raised by this case. Every one of the stockholders of the three banks now in receivership has a direct and vital interest in these questions. The receiver of the Milwaukee bank, as shown by the record and petition herein, has declared and is now seeking to collect a 100% assessment from each of 488 stockholders. The receiver of the Kansas City bank has not yet declared an assessment, but claims the power to declare and enforce it, and may attempt to exercise that power at any time. *When such an assessment is declared, it will affect more than 1800 stockholders scattered through 35 states,* with holdings, liable to assessment, having a par value of $3,800,000.00.

Each of these 1800 stockholders, in the present state of the law, would be justified in refusing to pay his assessment to the receiver until the latter had established, by judicial proceedings, his right to demand and receive it. Many of them, conceivably, would so refuse. The result would be expensive and protracted litigation in circuit after circuit, very probably ending in a conflict between Courts which could ultimately be resolved only by *certiorari* from this Court. The probability of such a conflict is indicated by the divergent views of the District Court and the Circuit Court of Appeals in the case at bar.

The Court Should Grant Certiorari in This Case.

Under the circumstances above set forth, we respectfully submit that this Court should take the present opportunity to settle, authoritatively, this important question as to the rights of the receiver. The case is not one of mere academic interest, but is one which directly affects thousands of individuals and millions of dollars. The case is one of those where it is of the greatest importance that the law should be settled, *one way or the other*. It falls, we submit, precisely within the language of Rule 38, par. 5 b, of this Court, which indicates as one of the reasons for granting *certiorari:*

> "Where a circuit court of appeals * * * has decided an important question of federal law which has not been, but should be, settled by this Court."

The significant difference, above alluded to, between the statute applicable to *land bank* receivers and the statute applicable to *national bank* receivers, clearly renders inapplicable the previous decisions of this Court which construe the National Banking Act.

This Court has only twice passed upon any provision of the Federal Farm Loan Act; and neither of its two decisions even remotely affects the present issue. In *Smith v. Kansas City Title & Trust Co.*, 255 U. S. 180, the constitutionality of the Act was upheld. In *Federal Land Bank of New Orleans v. Crosland*, 261 U. S., 374, the Court was called upon to consider only the scope of the tax-exemption provisions of the Act. The whole problem of the extent of the powers of the Farm Loan Board in general and of its receivers in particular, has not yet been considered, and is governed by no precedents in this Court. The issue presented by this case is one which urgently requires the authoritative voice of this Court for final settlement.

Conclusion.

We therefore respectfully submit that the writ of *certiorari* should be granted in this case.

KENEFICK, COOKE, MITCHELL & BASS,
General Counsel for the Stockholders' Protective Committee of the Kansas City Joint Stock Land Bank,
1330 Marine Trust Building,
Buffalo, New York.

LYMAN M. BASS,
PORTER R. CHANDLER,
Of Counsel.

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CHARLES ELMORE

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1929.

No. 39.

J. R. WHEELER, PETITIONER,

vs.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN, RESPONDENT.

PETITION FOR REHEARING.

EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,
Counsel for Respondent.

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PETITION FOR REHEARING.

Comes now the above named Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, and presents this his petition for a rehearing of the above entitled cause, and, in support thereof, respectfully shows:

This Honorable Court decided, in its opinion rendered on November 4, 1929, that the Circuit Court of

Appeals erred in holding that the Federal Farm Loan Board could levy an assessment and its Receiver could maintain suit to enforce the stockholders' liability created by statute. The reasons stated in the opinion are substantially as follows:

1. The section (§29, Code* §§961, 963) of the Federal Farm Loan Act that deals with insolvency of farm loan associations and joint stock land banks provides for the appointment of a receiver by the Farm Loan Board and states his duties and powers, but has no such provision as that found in the earlier National Bank Act (Code, Tit. 12, §192) which states that the receiver "may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders." When so important a grant of power contained in the prototype is left out from the copy it is almost impossible to attribute the omission to anything but design.

2. There is a plain reason for the difference. The national banks issue notes that constitute an important part of the currency of the country and that the United States has an interest in seeing paid.

3. Joint stock land banks are created to make loans on farm mortgages to members of an association in a territorially limited district, and are relatively local affairs.

4. There is not the same need that the stockholder's liability should be summarily disposed of behind his back in Washington rather than by the usual proceeding of a bill in equity which is brought in the neighborhood, in which the stockholder can be heard, and by which the assessment

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*References to Title 12, United States Code, are given as Code.

instead of 100 per cent can be adjusted to the specific case. And, to say the least, the bill in equity is the most likely way of reaching that result.

5. The general grant of powers in the Act is inadequate to supply this omission from the express statement of the procedure in insolvency.

GROUNDS FOR REHEARING.

This respondent respectfully submits that:

FIRST, joint stock land banks do not make loans through national farm loan associations; they are not relatively local affairs; their bonds are widely distributed and were outstanding in the hands of investors as of December 31, 1928, in the amount of $647,632,700, or nearly the same as the outstanding national bank currency at that time.

SECOND, the United States has at least as great an interest in seeing the bonds of joint stock land banks paid as in the case of national bank notes.

THIRD, the omission of the phrase, "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders" from §29 of the Federal Farm Loan Act does not curtail the powers of the Federal Farm Loan Board, in view of other provisions of the same section.

FOURTH, a single bill in equity could not accomplish the enforcement of the liability of stockholders of such banks who are widely scattered in every part of the United States and possibly foreign countries; and the Federal Farm Loan Board does not make a 100 per cent assessment against stockholders unless such assessment is necessary to pay the debts of the Bank.

OBJECT AND PERTINENT PROVISIONS OF THE FEDERAL FARM LOAN ACT.

Preliminarily the respondent begs to call attention to the scope and design of the Federal Farm Loan Act.

In view of the pressing needs of agriculture, the problem which presented itself to the Congress was how to provide a means of affording the necessary credit on a large scale to farmers on the security of land mortgages at low rates of interest (Document No. 494, House of Representatives, 64th Congress, First Session).

The report of the Joint Committee on Rural Credits presenting this Act was prepared after extensive study of the situation. It showed that the primary considerations which the Committee had in mind in the proposed legislation were, "1. Absolute safety and attractive income to the investor; 2. Low interest rates, long term mortgages, and amortization payments for the farmer; 3. Low cost of administration; 4. Simplicity of organization and operation; 5. Adaptability to every part of the country; 6. Stimulation to the cooperative spirit." (64th Congress, 1st sess. Vol. 144, House Documents, pages 8 and 17.) Under the proposed system Government control was assured by the creation of the Federal Farm Loan Board, independent and non-partisan, appointed by the President, and paid from the public treasury.

This Court in sustaining the constitutionality of the Federal Farm Loan Act (Smith *v.* Kansas City Title & Trust Co., 255 U. S. 180) pointed out that the Act is entitled:

"An act to provide capital for agricultural development, to create standard forms of investment based upon farm mortgage, to equalize rates of interest upon farm loans, to furnish a market for United States bonds, to create government depositories and financial agents for the United States, and for other purposes."

The Federal Farm Loan Bureau is "*charged with the execution of this chapter* * * * under the general supervision of a Federal Farm Loan Board." (Code, §651.)

Classes of Land Banks.

The Farm Loan Act created two distinct classes of land banks:

(1) Joint Stock Land Banks which make mortgage loans directly to individual borrowers whose lands are situated in the chartered territory of such banks, and are not empowered to make loans through national farm loan associations;

(2) Federal Land Banks which make mortgage loans chiefly through cooperative national farm loan associations (Code, §671).

As to Joint Stock Land Banks, it is provided that:

"No loans shall be made which are not secured by first mortgages on farm lands within the State in which such joint stock land bank has its principal office, or within some one State contiguous to such State." (Code, §818.)

The Federal Land Banks operate throughout the United States in twelve districts which are known as Federal Land Bank Districts. (Code, §671.)

Capitalization.

Joint Stock Land Banks. The minimum amount of stock of a joint stock land bank is fixed at $250,000. Borrowers from such banks are not required to subscribe for stock. The stock is bought and sold in the public markets and is, therefore, owned by individuals residing in all parts of the United States and in all probability by residents in foreign countries.

The stockholders are individually responsible, equally and ratably and not one for the other, for all contracts, debts and engagements of the bank. (Code, §812.)

Federal Land Banks. The capital stock of a Federal land bank is divided into shares of $5 each and may be subscribed for and held by any individual, firm, or corporation, or by the Government of any State, or of the United States (Code, §692). Subsequent sections provide for subscriptions to the stock of the bank by national farm loan associations. (Code §721.) With very limited exceptions, Federal land banks may loan only through national farm loan associations. (Code §§791; 801.)

There is no individual liability in connection with the stock of a Federal land bank.

Farm Loan Associations. These associations are corporations chartered by the Federal Farm Loan Board to enable their members to obtain loans from the Federal land banks. The stock must be subscribed for by member-borrowers owning farms in the chartered territory of the association. The stock of national farm loan associations can be transferred only to individuals who assume the mortgage and stock

interests of the owner (Code, §771). The members are subject to the same liability that is imposed by Code, §812, on the stockholders of joint stock land banks.

Dissolution and Appointment of Receivers.

Section 29 of the Federal Farm Loan Act (Code, §§961, 962, 963, 964, 965, and 966) provides for the voluntary and involuntary dissolution of national farm loan associations, Federal land banks, and joint stock land banks, and for the appointment of Receivers. This section also provides that upon default of any obligation, Federal land banks and joint stock land banks may be declared insolvent and placed in the hands of a Receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of the same section regarding national farm loan associations.

I.

Joint Stock Land Banks Do Not Make Loans Through National Farm Loan Associations and Are Not Local in Their Nature.

(A) There is no interlocking relation between joint stock land banks and national farm loan associations; the provisions for loans through farm loan associations extend only to federal land banks. (Code §§721; 733; 741; 742; 761.)

(B) Joint stock land banks were designed to operate on a large scale and were intended to have a nationwide distribution of their securities.

(1) The minimum amount of capital stock of a joint stock land bank is fixed at $250,000 (Code, §§11, 815). It is sold to investors privately and in the public markets and bonds may be issued to the extent of fifteen times the capital and surplus of the bank.

(2) Joint stock land banks have sold to investors privately and in the public markets stock aggregating $41,735,610.24, and bonds aggregating the amount of $647,632,700.00 as of December 31, 1928, were outstanding in the hands of investors (Annual Report for 1928 to Congress by the Federal Farm Loan Board) which is nearly the same as the outstanding National bank currency at that time. As of the same date bonds of Federal land banks outstanding in the hands of investors totaled $1,177,446,960.

(3) A joint stock land bank "when designated for that purpose by the Secretary of the Treasury shall be a depository of public money * * * and they may also be employed as financial agents of the Government." (Code §697.)

(4) The statutes promote the circulation of joint stock land bank bonds by:

Providing that they shall state on their face that the banks are under Federal supervision (Code, §821);

Expressly authorizing their issuance in bearer form (Code, §§861, 864);

Giving them tax exemption (Code, §931);

Making them lawful investments of all fiduciary and trust funds (Code, §941);

Designating them as security for all public deposits (Code, §941);

Authorizing Federal land banks and joint stock land banks to invest amortization payments and other funds in them (Code, §897);

Authorizing member banks of the Federal Reserve System to buy and sell them (Code, §941); and

Expressly entailing on the Farm Loan Board the "duty * * * of advising investors of the merits and advantages of Farm Loan Bonds" (Code, §664).

II.

The Interest of the United States in Seeing the Bonds of Joint Stock Land Banks Paid.

The extent to which the Congress went in promoting the circulation of joint stock land bank bonds in itself indicates the strong interest that the United States has in these bonds. This interest was expressed in the strongest possible way by expressly making the bonds instrumentalities of Government. (See Smith *v.* Kansas City Title and Trust Company, 255 U. S. 180.)

It was an extraordinary thing for the United States to provide for bonds of this kind and to give them distribution not only by tax exemption and Government supervision but also by authorizing them to be security for public deposits. Further than this the Congress went into an unusual field by making these bonds lawful investments for trust funds, and then further sought to induce investment in them by expressly entailing on the Board the duty of promoting their sale by advice as to their merits and advantages.

It is respectfully submitted that the interest of the United States in the payment of these bonds is at least as great as its interest in the payment of National bank notes. In fact, it is practically impossible that

the statutory liability of National bank stockholders ever will be invoked to indemnify the United States on National bank notes, because not only are National bank notes secured by United States bonds of their par value (Code, §101) but in addition the United States has the first and paramount lien on all the assets of a National bank for its protection. (Code, §137.)

It is submitted that these facts show not only that joint stock land banks are national in character but also that their maintenance, operation, and dissolution constitute a public trust.

III.

The omission of the phrase, "and may, if necessary to pay the debts of such association, enforce the individual liability of the stockholders," from §29 of the Federal Farm Loan Act.

The Court in its opinion states:

> "When so important a grant of power contained in the prototype is left out from the copy it is almost impossible to attribute the omission to anything but design."

We think the omission is attributable to design but we submit that when a careful comparison is made of the prototype and the copy it will appear that the Federal Farm Loan Board was intended to have as full power with respect to the administration of the receivership and the payment of the bank's obligations as would have been afforded by a court of competent jurisdiction in the absence of statute. This compar-

ison can best be made by showing the two sections in parallel columns.

Comparison of the Two Sections.

§192 (the National Bank Act), in the right column, is designated as the prototype, and §961 (the Federal Farm Loan Act), placed in the left-hand column, is designated as the copy. The deviations in the copy are put in italics and the important deviations numbered for convenient reference. The provisions of these two sections not necessary for this comparison have been omitted.

Joint Stock Land Banks §§961, 962.	**National Banks §192**
Copy.	**Prototype.**
"§961. (1) *Upon receiving satisfactory evidence that any national farm loan association* [or joint stock land bank] *has failed to meet its outstanding obligations of any description* (2) *the Federal Farm Loan Board* may forthwith *declare such association insolvent* and appoint a receiver and require of him such bond and security as it deems proper. Such receiver, under the direction of the *Federal Farm Loan Board*, shall take	"§192. (1) On becoming satisfied, as specified in sections 131 and 132, that any association has refused to pay its circulating notes as therein mentioned, and is in default, the Comptroller of the Currency may forthwith appoint a receiver, and require of him such bond and security as he deems proper. Such receiver, under the direction of the comptroller, shall take possession of the books, records, and assets of every de-

Copy.

possession of the books, records, and assets of every description of such association, collect all debts, dues, and claims belonging to it, and, (3) *with the* approval of the Federal Farm Loan Board, or upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, (4) on a like *approval or order,* may sell all the real and personal property of such association (5) on such terms as the *Federal Farm Loan Board* or said court shall direct."

"§962. Such Receiver shall pay over all monies so collected to the Treasurer of the United States, subject to the order of the Federal Farm Loan Board, and also make report to said board of all his acts and proceedings."

Prototype.

scription of such association, collect all debts, dues, and claims belonging to it, and, (3) upon the order of a court of record of competent jurisdiction, may sell or compound all bad or doubtful debts, and, (4) on a like order, may sell all the real and personal property of such association, (5) on such terms as the court shall direct; *and may, if necessary to pay* the debts of such association, enforce the individual liability of the stockholders. Such receiver shall pay over all money so made to the Treasurer of the United States, subject to the order of the comptroller and also make report to the comptroller of all his acts and proceedings."

The important differences which have been noted in the foregoing comparison are as follows:

Copy	*Prototype*
The Copy provides:	Section 961 provides:
1. "Upon receiving satisfactory *evidence.*"	1. "On becoming satisfied," and specifies the kind and character of the evidence upon which the Comptroller of the Currency may act.
2. The Federal Farm Loan Board may *declare* joint stock land bank *insolvent.*	2. No such declaration by the Comptroller.
3. The Board may, without the order of a court of record, empower its receiver to sell or compound all bad or doubtful debts.	3. The Comptroller has no such power.
4. The Board may, without the order of a court of record, direct its receiver to sell all real and personal property of the insolvent bank.	4. The Comptroller has no such power.
5. The Board may fix the terms of such sales of property as it may direct.	5. The Comptroller has no such power.

In other words, the powers of the Federal Farm Loan Board in this respect are equal to those of a court of equity, whereas the like powers of the Comptroller of the Currency are limited. A national bank receiver can sell or compound all bad or doubtful debts, only upon the order of a court of competent jurisdiction, and only on like order may he sell all the real and personal property of such association. Under the powers given the Federal Farm Loan Board, an account may be stated showing the net difference, if

any, between a joint stock land bank's assets and liabilities. Only an arithmetical calculation is necessary in order to determine the proportionate part of such deficit that is due from each individual shareholder. Finally when the Board has made this calculation carefully and fairly as it must do, there is nothing left for a court of record to determine.

This determination was made in the case of the Bankers Joint Stock Land Bank, as shown on page 39 of the Twelfth Annual Report of the Federal Farm Loan Board, which it is required to make by §661 of the Code to the Speaker of the House of Representatives.

The statement in question reads as follows:

> "Bankers Joint Stock Land Bank of Milwaukee."
> "The receiver's valuations of the assets of this bank, as stated in the last annual report, showed a deficit exceeding the amount of its entire capital stock, and accordingly an assessment was levied, on January 11, 1928, upon the stockholders of the bank for $1,200,000, or 100 per cent of the capital stock of the bank." . .

The same annual reports of the Federal Farm Loan Board show that the Federal Farm Loan Board proceeded in like manner in making assessments against the stockholders of the Kansas City Joint Stock Land Bank of Kansas City, Missouri, and the Ohio Joint Stock Land Bank of Cincinnati, Ohio, on the basis of valuations made by the Receivers of those Banks. These three joint stock land banks are the only banks in the Farm Loan System for which receivers have been appointed.

The receiver appointed by this board must of necessity be its officer to carry out its proper orders. The power to direct the receiver of an insolvent corporation to collect the amount, if any, due from its stockholders is a necessary incident to the duties specifically imposed upon it with respect to the administration of a receivership and the liquidation of the bank. However, it is submitted that the Congress did not leave this important question to inference. Code §831 which defines the general powers of the Board contains the following provision:

> "(j) To exercise such incidental powers as shall be necessary or requisite to fulfill its duties and *carry out the purposes of this Act.*" (Italics ours.)

Reading this subsection in the light of the purposes expressed in the title of the Act and bearing in mind that the Board has power to do every act necessary for the determination of the deficiency which arithmetically determines the stockholders' liability, it follows that the incidental powers of the Board to fulfill its duties and carry out the purposes of the Act must include the power to make the computation of the amount of assessment against the stockholders and enforce its collection.

The Comptroller of the Currency cannot make all of the important determinations leading up to a complete liquidation without the order of a court of record or without the concurrence of the Secretary of the Treasury (Code, §§192, 132), and, therefore, the Congress naturally added the phrase that the receiver of a National bank "may, if necessary to pay the debts

of such association, enforce the individual liability of the stockholders." The power of the Comptroller to make and fix the amount of the assessment must be implied, as it is nowhere expressed.

It is submitted that even though it was considered by the Congress necessary to empower a national bank receiver to collect assessments against stockholders, it was not necessary, in view of the other provisions of the Federal Farm Loan Act, to give the Board's receiver this power explicitly.

IV.

The Broad Distribution of the Capital Stock of Joint Stock Land Banks.

In view of the wide distribution of the stock the enforcement of the stockholders' liability by suit in equity would be more than ordinarily inefficient and expensive. Only a limited number of stockholders could be served with process in the initial suit, and ancillary suits and receiverships would be required in numerous jurisdictions. It would result in more than duplicating the machinery for the liquidation of the Bank by adding to the single receivership created by the Board a court receivership for a limited purpose in every jurisdiction where stockholders might be found.

It is submitted that the Congress could not have intended so difficult and cumbersome a procedure to enforce payment of these obligations, to say nothing of the difficulties that would be added by such procedure in enforcing the liability of stockholders residing outside of the United States.

This view is emphasized by the fact that the authorization of the Secretary of the Treasury to use joint stock land banks as depositories of public moneys contemplates the United States as a creditor of these banks. It is submitted further that the Congress could not have intended that the United States Government would have to go through this complicated procedure of numerous suits in equity to enforce its rights as a creditor rather than to proceed through the instrumentality of the single statutory receiver provided for in the Act.

For these reasons, it is respectfully urged that this petition for rehearing be granted and that the judgment of the Circuit Court of Appeals for the Seventh Judicial Circuit be, upon further consideration, affirmed.

Respectfully submitted,
EDWIN S. MACK,
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE,
Counsel for Respondent.

CERTIFICATE OF COUNSEL.

I, Edwin S. Mack, one of the counsel for the above named respondent, do hereby certify that the foregoing petition for a rehearing of this case is presented in good faith and not for delay.

EDWIN S. MACK,
Counsel for Respondent.

(643)

We join in the foregoing certificate
ARTHUR W. FAIRCHILD,
J. GILBERT HARDGROVE

PETITIONER'S BRIEF

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In The

Supreme Court of the United States

October Term, A. D. 1928.

No. 711

J. R. WHEELER,

Petitioner,

v.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN,

Respondent.

BRIEF OF PETITIONER IN OPPOSITION TO MOTION FOR REHEARING.

Two briefs have been filed upon the petition for rehearing. We will consider first the brief of the Receiver of the Bankers Joint Stock Lank Bank of Milwaukee.

GROUNDS FOR REHEARING.

The grounds for rehearing alleged are:

I. That Joint Stock Land Banks Are Not Relatively Local Affairs.

The answer to this is found in *Section 818, Chapter 7, Title 12, U. S. Code Annotated,* which provides as to loans to be made by Joint Stock Land Banks:

> "provided, however, that no loans shall be made which are not secured by first mortgages on farm lands within the state in which such Joint Stock Land Bank has its principal office, or within some one state contiguous to such state."

Section 961, Chapter 7, Title 12, U. S. C. A., which is the section under which the receiver of the Farm Loan Board derives his power, is concerned solely with the insolvency of farm loan associations. It is only by virtue of *Section 963* that Joint Stock Land Banks are liquidated by the same proceedings. *Section 963* provides that:

> "upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Loan Board, and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations."

Counsel's argument that Joint Stock Land Banks are not relatively local affairs must also apply to Farm Loan Associations. Farm Loan Associations must be organized by persons desiring to borrow money on farm mortgage security located in one of the Federal Land Bank districts *(Section 711, Chapter 7, Title 12, U. S. C. A.)* Its directors and all officers must be bona fide residents of the territory within which the association is authorized to do business *(Section 713)*. The Federal Farm Loan Board shall designate the territory in which such association may make loans *(Section 719)*. This is a purely local affair organized by owners of farm property.

II. That the United States has at Least as Great an Interest in Seeing the Bonds of Joint Stock Land Banks Paid as in the Case of National Bank Notes.

The bonds of Joint Stock Land Banks do not constitute obligations of the government in any way. None of them are held by the Federal Government. They are owned solely by private investors, largely by those interested in the tax free exemption of the bonds. There is no distinction between them and railroad, telegraph or telephone bonds so far as the public governmental interest is concerned. The government is interested in the operation of all of these public utilities, and would suffer much more from the cessation of business of one of these corporations than it would from the cessation of the business of a Joint Stock Land Bank and yet one could hardly claim that the government should enforce payment of the bonds of an insolvent public utility. The interest of the government in either of the two classes of corporations is not comparable with its interest in the national currency.

III. That the Omission of the Grant of Power to Enforce the Individual Liability of Stockholders from Section 29 Does Not Curtail the Powers of the Federal Farm Loan Board.

This subject has been so thoroughly argued before the court and in the briefs that it need not be discussed here, as nothing whatever new is mentioned in the brief.

IV. That Ancillary Suits in Receivership Would Be Required in Numerous Jurisdictions.

This question was argued exhaustively in the briefs, and nothing new is offered upon this point.

THE BRIEF OF AMICI CURIAE.

A brief has been filed on behalf of the receiver of the Kansas City Joint Stock Land Bank and the receiver of the Ohio Joint Stock Land Bank without the consent of the petitioner herein. It covers principally the same points already considered by the court.

The point argued under paragraph I is that the interest of the United States Government has not been fully presented nor considered.

Point II is that the government's views should be presented through its proper official.

The interest of the government and the extent of the investment in farm loan securities has been specifically called to the attention of this court, and the government's views have been presented through its duly authorized officials, the Federal Farm Loan Board and its receiver. The Board has its general counsel and a corps of attorneys who have been active in this litigation from the beginning. Its general counsel sat in the argument of this case before this court, and every move in the entire litigation has been supervised and approved by the government's representatives. It is impossible to conceive how the government could be more fully represented than it has been.

Paragraph III of the brief argues that the shareholders' liability should constitute an asset of the bank and should be enforceable by the Farm Loan Board, and that special provisions of the act indicating this intent on the part of Congress has not been called to the attention of the Court. Reference is thus made in *Section 966* which

applies solely to the liquidation of Farm Loan Associations, and reads as follows:

> *Section 966, Chapter 7, Title 12, U. S. C. A.* "LIQUIDATION OF FARM LOAN ASSOCIATIONS; CANCELLATION OF STOCK AND ISSUE OF NEW STOCK TO BORROWERS; PERSONAL LIABILITY OF STOCKHOLDERS. Upon liquidation of any national farm loan association, the stock in the Federal land bank held by such association shall be canceled and the Federal Land Bank shall thereupon issue to the borrowers through such association an amount of stock in the Federal Land Bank equal to the amount of stock held by such borrowers in the liquidated association, such stock to be held by the bank as collateral to the loans of such borrowers and to be paid off and retired at par in the same manner as stock held by borrowers in farm loan associations, and the Federal Land Bank shall pay to the borrowers holding such stock the same dividends as are paid to national farm loan associations by such bank. The personal liability of the stockholders in such liquidated association to the association shall survive such liquidation and shall be vested in the bank in that district, which may enforce the same as fully as the association could if in existence."

This section was thoroughly considered by all the parties to the litigation upon the arguments before the trial court, and at the argument before the Circuit Court of Appeals, and it was unanimously agreed that this section had no application whatever to the personal liability of stockholders based upon their stock ownership.

Section 742, Chapter 7, Title 12, U. S. C. A. provides:

> "Any person desiring to secure a loan through a national farm loan association under the provisions of this chapter, may at his option, borrow from the Federal Land Bank *through such association* the sum necessary to pay for shares of stock subscribed for

by him in the national farm loan association, such sum to be made a part of the face of the loan and paid off in amortization payments * * *".

Section 733, Chapter 7, Title 12, U. S. C. A. provides as follows:

"BORROWERS ONLY TO BE MEMBERS; AMOUNT OF STOCK TO BE HELD BY BORROWER; STOCK HELD AS COLLATERAL; RETIREMENT OF STOCK. No persons but borrowers on farm land mortgages shall be members or shareholders of national farm loan associations. Any person desiring to borrow on farm land mortgage through a national farm loan association shall make application for membership and shall subscribe for shares of stock in such farm loan association to an amount equal to 5 per centum of the face of the desired loan, said subscription to be paid in cash upon the granting of the loan. If the application for membership is accepted and the loan is granted, the applicant shall, upon full payment therefor, become the owner of one share of capital stock in said loan association for each $100 of the face of his loan, or any major fractional part thereof. Said capital stock shall be paid off at par and retired upon full payment of said loan. Said capital stock shall be held by said association as collateral security for the payment of said loan, but said borrower shall be paid any dividends accruing and payable on said capital stock while it is outstanding."

It thus appears that the shareholder of the Farm Loan Associations has a personal liability to the association for the amount of his mortgage, and if he has borrowed for the purpose of paying for his stock, for that amount as well. This is entirely separate and distinct from his personal liability as a shareholder of the association.

Section 966 specifically authorizes the transfer to the Federal Land Bank of the membership of the liquidated association, the stock of the Land Bank being issued to the borrowers in the same amounts that they held stock in the liquidated association. The bank thereafter deals directly with these borrowers. This means simply that the Land Bank takes the position of the liquidated association; that the notes and mortgages of the borrowers which run to the association are taken over by the bank, which may, of course, enforce the personal liability of the borrowers upon their notes. This section merely authorizes the assignment from the Farm Loan Association to the Federal Land Bank, and is in no way concerned with the double liability of stockholders upon their stock.

Paragraph IV of the brief refers to *Section 856* which authorizes the Farm Loan Board to call upon any land bank for additional security to protect the bonds issued by it, and argues that

> "when the bank becomes insolvent it clearly becomes the duty of the Farm Loan Board to make a requisition and assessment on the shareholders to the extent of their liability in order to provide the additional security to protect the bonds of the insolvent bank."

Section 856 was not intended to be used in cases of insolvency. Its purpose was to require any operating bank to furnish additional security when some of its collateral went wrong. It has no application to a case of a bank in liquidation.

Paragraph V of the brief is a statement that due consideration has not been given to *Clause j of Section 17* of the Act, *Section 831, U. S. C. A.*, giving the Federal Farm Loan Board incidental powers. This has been fully covered by the decision.

Paragraph VI of the brief claims that due consideration has not been given to the construction placed upon the Farm Loan Act by the Federal Farm Loan Board. This is the first time that this question has ever been considered by the Federal Farm Loan Board, so that no practice or construction has been developed or grown up with regard to it, and there would seem to be no reason why the construction of one party to the litigation should be accepted in preference to the construction of the other party.

Paragraph VII argues against the enforcement of the shareholders' liability through ancillary proceedings by a creditor's bill, a subject fully argued to the court.

Paragraph VIII claims that due consideration has not been given to the magnitude of the land bank system. The court has already been given the magnitude of the land bank system, and that was undoubtedly the basis for its granting the writ of certiorari herein.

Since the foregoing has been written a third brief has been received this 27th day of November, 1929, filed on behalf of the Bondholders Protective Committee of the Kansas City Joint Stock Land Bank. It confines itself to the argument that *Section 812, U. S. C. A.,* providing that the shareholders shall be held individually responsible for the contracts, debts and engagements of the bank, by reason of the use of the word "held" imposed upon the Farm Loan Board the active duty of enforcing the liability of shareholders. This same argument was made upon the hearing in this case, and was considered by the court.

It therefore appears that there is nothing new which has been called to the attention of the court in any of the three briefs, and that the arguments made are simply repetitions of the arguments presented to and considered by the court.

It is respectfully submitted that the petitions for rehearing should be denied.

JOSEPH V. QUARLES,
FLOYD E. THOMPSON,
LAWRENCE A. COLE,
Counsel for Petitioner.

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No. [redacted] 39

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1928.

J. R. WHEELER, PETITIONER,

VS.

HOWARD GREENE, RECEIVER OF THE BANKERS JOINT STOCK LAND BANK OF MILWAUKEE, WISCONSIN.

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE BY HERMAN M. LANGWORTHY, RECEIVER OF THE KANSAS CITY JOINT STOCK LAND BANK, AND FLOYD L. ROGERS, RECEIVER OF THE OHIO JOINT STOCK LAND BANK OF CINCINNATI, OHIO, AND BRIEF.

CYRUS CRANE,
E. F. HALSTEAD,
Counsel for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Counsel for Floyd L. Rogers, Receiver.

No. 711.

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May it Please the Court:

The undersigned as counsel for Herman M. Langworthy, receiver of the Kansas City Joint Stock Land Bank and Floyd L. Rogers, receiver of the Ohio Joint Stock Land Bank, respectfully move this Honorable

Court for leave to file the accompanying brief in this case as *amici curiae*.

CYRUS CRANE,
E. F. HALSTEAD,
Counsel for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Counsel for Floyd L. Rogers, Receiver.

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BRIEF.

With respect to the receiver of the Kansas City Joint Stock Land Bank, this brief is tendered on behalf of a member of the bar of this court who, both as counsel and receiver, has had under the direction of the Federal Farm Loan Board more than two years continuous experience in the practical administration of the affairs of an insolvent Joint Stock Land Bank. Both receivers joining in the brief deem the question involved in this case of the utmost importance in the proper performance of their duties.

If excuse or apology is needed for its tender, it is to be found in the sincere belief based on such

practical experience that the opinion of this court (a) fails to take into consideration the very great responsibility resting upon the United States Government in respect to bonds issued as part of that vast financial structure created by it under the provisions of the Federal Farm Loan Act, and which as declared by Congress was designed to "serve governmental purposes" (see *Smith* v. *Kansas City Trust Company*, 255 U. S. l. c. 211); and (b) imposes upon the bonds of land banks an impairment and burden, *i. e.*, enforcement of stockholders' liability, never intended by the Federal Farm Loan Act if consideration be given to all parts of that Act, and to its broad scope and purposes.

The suggestions here made are offered with the conviction that they have not heretofore been fully presented to or considered by this court, and in the hope that they may be helpful on the highly important question now before the court.

I.

The underlying interest which the United States Government has in the stability and security of farm loan bonds issued pursuant to the provisions of the Federal Farm Loan Act has not been fully presented nor considered.

On June 30, 1929, there were unmatured Farm Loan Bonds issued pursuant to the provisions of the Federal Farm Loan Act by Federal Land Banks and Joint Stock Land Banks (including Joint Stock Land Banks in Receivership) in the aggregate sum of over one billion eight hundred million ($1,800,000,000.00) dollars (see "Statements of Condition of Federal Land

Banks, Joint Stock Land Banks, Federal Intermediate Credit Banks," issued by the Federal Farm Loan Bureau in the Treasury Department as of June 30, 1929, pages 1, 7 and 27, or Twelfth Annual Report of the Federal Farm Loan Board to Congress, House Documents 382). These bonds are now held by thousands upon thousands of investors throughout the entire United States.

The fact that the United States Government has authorized and approved the issuance of this enormous amount of securities, which under the terms of the Act "shall be deemed and held to be instrumentalities of the Government of the United States" (see Section 26 of Federal Farm Loan Act; U. S. Code, Section 931), challenges instant and careful inquiry into the security which lies behind these bonds and the safeguards with which they are surrounded.

The stability of this gigantic financial structure created for Governmental purposes is of necessity a matter of Governmental concern, and the intent of Congress concerning the safeguards which it sought to establish must be determined from the entire scope of the Act.

Under the terms of the Act, Congress provided that (Section 3 of the Federal Farm Loan Act; U. S. Code, Section 664):

> "It shall be the *duty* of the Federal Farm Loan Board to prepare from time to time bulletins setting forth the principal features of this chapter and through the Department of Agriculture or otherwise to distribute the same, particularly to the press, to agricultural journals, and to farmers'

organizations; to prepare and distribute in the same manner circulars * * * *advising investors of the merits and advantages of farm loan bonds* * * *"* (our italics).

Surely the United States Government has a vital interest in the stability and security of bonds thus placed in the hands of investors.

Section 16 of the Act provides among other things (U. S. Code, Section 821):

> "Each joint stock land bank organized under this chapter shall have authority to issue bonds based upon mortgages taken by it in accordance with the terms of this chapter. Such bonds shall be in form prescribed by the Federal Farm Loan Board, *and it shall be stated in such bonds that such bank is organized under this subdivision of this chapter* (Section 16 of the Act), *is under Federal supervision, and operates under the provisions of this chapter"* (our italics).

Section 16 of the Act (U. S. Code, Section 812) also provides for the double liability of shareholders of Joint Stock Land Banks.

Surely any bondholder purchasing these bonds with the printed matter which is *required* to be placed on the face thereof, would have the right to assume that the Federal Government, through its agency the Federal Farm Loan Board, assumes the responsibility of enforcing the shareholders' liability for the benefit of the bondholders.

Section 26 of the Act (U. S. Code, Section 931) provides, among other things, that:

> "* * * Farm Loan Bonds issued under the provisions of this chapter, shall be deemed and

held to be *instrumentalities of the Government of the United States* * * *" (our italics).

Surely Congress could not have intended to provide for the creation of "instrumentalities of the Government of the United States" without also intending to give to the holders thereof the full benefit of the machinery set up for the protection of such instrumentalities, including the enforcement of shareholders' liability by the Government's agency, the Federal Farm Loan Board, which is charged with the administration of the Act.

Section 27 of the Act (U. S. Code, Sections 941, 942 and 943) provides:

> "That farm loan bonds issued under the provisions of this act by Federal Land Banks, or Joint Stock Land Banks *shall be a lawful investment for all fiduciary and trust funds, and may be accepted as security for all public deposits.*
>
> Any member bank of the Federal Reserve System may buy and sell farm loan bonds issued under the authority of this act.
>
> Any Federal Reserve Bank may buy and sell farm loan bonds issued under this act *to the same extent and subject to the same limitations placed upon the purchase and sales by said banks of state, county, district and municipal bonds* under subsection (b) of Section Fourteen of the Federal Reserve Act approved December twenty-third, nineteen hundred and thirteen" (our italics).

Surely when the United States Government assumes the responsibility of authorizing the investment in farm loan bonds for the purposes above indicated, it must have been intended that it should assume the

responsibility of enforcing every protection placed behind those bonds, including that of the shareholders' liability.

In urging the vital interest which the United States Government has in the stability and security of these bonds, we deem it not out of place to quote the following from the brief and argument submitted by the Hon. Charles E. Hughes on behalf of the appellee Federal Land Bank of Wichita, Kansas, in the case of *Smith* v. *Kansas City Title & Trust Company, et al.*, 255 U. S. 180 in this court (see page 51 of Brief and Argument for Appellee Federal Land Bank of Wichita, Kansas):

> "If it were necessary to present the question, we should urge with confidence that these Federal Land Bank bonds are in truth supported by the good faith and credit of the United States and are protected by virtue of an actual exercise of the borrowing power.
>
> "The fact that a special fund is created to meet the liability on the bonds, or that recovery is limited, is by no means, controlling. The Government is not liable in any case unless it consents to be, and of course it may fix the measure of liability, and provide particular funds *or security for payment.* But when the Government, to meet a Governmental purpose, goes out through its officers to borrow money, and issues bonds in the name of its creature *which it not only dominates but directs,* and provides that these bonds shall 'be deemed and held to be instrumentalities of the Government of the United States,' we think, that apart from any question of mere liability to suit, *the good faith and credit of the United States lie behind them.*"

and in the synopsis of his argument in this court he said:

> "The purposes in view are *public*, not private; *national*, not local" (255 U. S. l. c. 192).

These arguments prevailed, and their substance is embodied in the opinion of this court.

We sincerely believe that the fact that the United States Government is not liable for the payment of these farm loan bonds, is an added reason for urging that Congress must have intended that the power of the United States should be exercised in every possible way through its agencies in the enforcement of all of the security behind these bonds, including that of the shareholders' liability.

II.

The Government's views should be presented through its proper official, before the case is closed.

Because of the very great interest which the United States Government has in the final determination of this case, we most respectfully but earnestly submit that before the opinion of this court becomes final this case should be set down for re-argument in order that the Department of the Treasury may submit its views concerning the interpretation of the Act and the responsibilities of the Government for enforcement of the shareholders' liability. That procedure was followed by this court, of its own motion in the case of *Sullivan* v. *Kidd*, 254 U. S. 433. That case was between private individuals, but involved the construction of a treaty between Great Britain and the United States.

After the case had been argued, this court of its own motion, presumably because of the interest of the United States in the proper construction of the treaty, ordered the case set down for re-argument and that the Attorney General of the United States and of the State of Kansas be notified of the pendency of the cause. This court said (page 438):

> "The case was argued and submitted at the last term of this court. It was ordered reinstated with notice to the Attorneys General of the United States and of the State of Kansas. The case has been reargued. *The Solicitor General presented the views of the State Department of the United States, and submitted a brief in behalf of the Government*" (our italics).

It is of interest to note that the conclusion of the court in that case was based in part upon views expressed by the Secretary of State to the Department of Justice, after the case had been first argued, and setting forth the views of the Secretary of State concerning the proper construction of the treaty in question. On this point the court said (*Sullivan* v. *Kidd*, 254 U. S. l. c. page 438):

> "The American contention is stated by the Solicitor General, and appears by a communication from the Secretary of State of October 2, 1920 (the case was first argued April 27, 1920), sent in response to the invitation of the Solicitor General, and now on the files of the Department of Justice" (the above parenthetical insertion is ours).

We respectfully submit that in the case at bar, because of the vital interest which the United States

Government must have in the protection and security of the enormous volume of farm loan bonds which it has sponsored and approved, and caused to be placed upon the market for investment, the case should be reargued in order that the Government's view may be fully presented and considered.

In any event the proper construction of the Act should be approached with a full appreciation and consideration of the broad Governmental purposes and interests involved, and the character of security and protection which the Act as a whole indicates that Congress must have intended.

III.

Specific provisions of the Act which indicate a clear intent upon the part of Congress that the shareholders' liability should constitute an asset of the bank and, therefore should be enforceable by the Farm Loan Board and its receiver, have not heretofore been called to the attention of the court, and were not considered in the opinion.

In its opinion this court states that:

> "The receiver has power to collect the assets of the bank, *but the liability of stockholders is no part of those assets*" (our italics).

Respectfully, but earnestly, we insist that the last clause of that statement has overlooked and failed to give consideration to the Federal Farm Loan Act in its entirety, and to specific provisions of the Act which we think necessarily lead to an opposite conclusion.

The Federal Farm Loan Act does not attempt to prescribe in detail the procedure to be followed in the

event of insolvency of Federal Land Banks and *Joint Stock Land Banks* except by reference to and adoption of proceedings prescribed in cases of insolvency of National Farm Loan Associations. The act says (Section 29 U. S. Code, Section 966):

> "Upon default of any obligation, Federal Land Banks and Joint Stock Land Banks may be declared insolvent and placed in the hands of a receiver by the Federal Farm Land Board, *and proceedings shall thereupon be had in accordance with the provisions of this section regarding National Farm Loan Associations*" (our italics).

What then are the proceedings to be had in the event of insolvency of the Farm Loan Association or a Joint Stock Land Bank? The same section 29 answers thus:

> "Such receiver under the direction of the Federal Farm Loan Board shall take possession of the books, records and assets of every description of such association, collect all debts, dues and claims belonging to it," etc.

In addition to this and to make sure that no stockholder shall escape his liability, *which liability is by the act made an asset of the defunct Farm Loan Association and not of creditors*, section 29 of the act as amended (U. S. Code, Section 966) provides:

> "Upon liquidation of any National Farm Loan Association, the stock in the Federal Land Bank held by such association shall be canceled, etc. * * * *The personal liability of the stockholders* in such liquidated association *to the association* shall survive such liquidation *and shall be vested in the bank in that district, which may enforce the same as fully as the association could if in existence*" (our italics).

The foregoing then are the "proceedings" which shall be had (as provided in the act) upon the insolvency not only of a National Farm Loan Association but as well upon the insolvency of a Joint Stock Land Bank.

Now, we respectfully submit that a careful analysis of the act itself shows that the *personal liability* above referred to must relate solely to the double liability of shareholders of National Farm Loan Associations as provided in section 9 of the act (U. S. Code, Section 744). It could not relate to personal liability on stock subscriptions, because such subscriptions must be paid in cash (Section 8 of the Act; U. S. Code, Section 733). It could not relate to personal liability of the shareholder on his mortgage loan, because the loan of the shareholder is procured from the land bank of the district (Section 9 of the Act; U. S. Code, Section 741), and the association merely endorses the loan (Section 11 of the Act; U. S. Code, Section 761). It could not relate to the assessment leviable for "expenses of said association" under section 7 of the act (U. S. Code, 715), because after liquidation of the association it could not have "expenses" of the character contemplated in said section 7.

Therefore, under the plain terms of the act (Section 29 of the Act; U. S. Code, Section 966), the *personal liability* of the stockholders is a liability *"to the association,"* and therefore is an asset of the association and upon liquidation of the association enures to the benefit of the land bank of the district.

Since the personal liability of shareholders (the double liability) of a farm loan association, as provided by section 9 of the act (U. S. Code, Section 744), belongs to the association (Section 29 of the Act, U. S. Code, Section 966, last sentence), and therefore constitutes an asset in the hands of a receiver of a farm loan association to be collected by such receiver (Section 29 of the Act; U. S. Code, Section 961), it would seem clear that it was the intent of Congress by the provisions of that portion of section 29 of the act above quoted (U. S. Code, Section 963), that the personal liability (the double liability) of shareholders of a joint stock land bank, as provided by section 16 of the act (U. S. Code, Section 812), should likewise constitute an asset of the bank, and in case of a receivership, should be collected by the receiver the same as all other "debts, *dues*, and claims belonging to it" (U. S. Code, Section 961), since, as pointed out above, the "proceedings" in the event of insolvency are the same.

IV.

There has not been a full presentation or consideration of the fact that Congress has given to the Federal Farm Loan Board the specific power to call upon any land bank for additional security to protect the bonds issued by it.

Section 19 of the Act (U. S. Code, Section 856) provides as follows:

> "The Federal Farm Loan Board may at any time call upon any land bank for additional security to protect the bonds issued by it."

Since the Federal Farm Loan Board has the power to call upon any land bank for additional security to

protect the bonds issued by such bank, the Board clearly has the power to enforce the giving of such security, and the bank has the *obligation* to furnish it.

If the bank does not meet this obligation, then clearly under the provisions of section 16 of the act (U. S. Code, Section 812), this is one of the "contracts, debts and engagements of such bank" for which the shareholders are liable, equally and ratably, to the extent of the amount of stock owned by them.

Obviously, this is not an obligation which a bondholder may enforce, because the power to require such additional security is vested in the Federal Farm Loan Board. When the bank becomes insolvent, it clearly becomes the duty of the Farm Loan Board to make a requisition and assessment on the shareholders to the extent of their liability in order to provide the additional security to protect the bonds of the insolvent bank.

This is manifestly one of the safeguards with which Congress intended to surround the bonds of the bank, and which it gave the Federal Farm Loan Board the undoubted power to enforce.

V.

Due consideration has not been given to the meaning and effect of clause (j) of section 17 of the Act (U. S. Code, section 831).

Section 17 of the Act (U. S. Code, Section 831) provides, among other things:

> "That the Federal Farm Loan Board shall have power—
> (j) To exercise such incidental powers as shall be necessary or requisite *to fulfill its duties and carry out the purposes of the act*" (our italics).

This court makes no reference to this provision of the Act whatever, although Congress must have intended it to have some meaning.

One meaning (among others) is definite and obvious. Congress gives to the Farm Loan Board the power "at any time" to "call upon any land bank for additional security to protect the bonds issued by it" (Section 19 of the Act; U. S. Code, Section 856).

It should be borne in mind that it is not contemplated by the Act that a joint stock land bank shall have any creditors (excepting usual current operating obligations) other than the bondholders. These banks are not banks of deposit (see Section 14 of the Act; U. S. Code, Section 791; also Section 16 of the Act; U. S. Code, Section 813). Consequently Congress was chiefly concerned with the protection of the bonds, and the protection of the bonds must necessarily be the paramount *"purpose"* in providing for the double liability of shareholders (section 16 of the Act; U. S. Code, Section 812).

Since the Federal Farm Loan Board is given the specific power "at any time" to "call upon any land bank for additional security to protect the bonds issued by it" (Section 19 of the Act; U. S. Code, Section 856), and since the Board is further given the power "to exercise such incidental powers as shall be necessary or requisite to *fulfill its duties and carry out the purposes of the Act*" (Section 17 of the Act; U. S. Code, Section 831), Congress clearly gave to the Board the power to enforce the shareholders' double liability in order to fulfill its duty of requiring additional se-

curity and carrying out the purposes of the Act in thus protecting the bonds of the bank.

The obvious explanation of the omission from the Federal Farm Loan Act of any provision that a receiver may enforce the individual liability of the shareholders, as in the case of the National Bank Act (U. S. Code, Section 192), is that such power is otherwise specifically and adequately provided for (a) by making, in the "proceedings" in case of insolvency, the stockholders' liability a part of the assets belonging to the defunct loan association or joint stock bank (as pointed out in paragraph III, *supra*), and (b) by vesting in the Federal Farm Loan Board the power to require a land bank to give additional security to protect the bonds issued by it, and giving the Board the right to exercise the powers necessary to fulfill its duties and carry out the purposes of the Act. If in order to compel the giving of additional security to protect the bonds issued by a land bank, it becomes necessary to declare such bank insolvent, appoint a receiver, and proceed to enforce the shareholders' liability, the Board obviously has that power.

Any other conclusion, we submit, would lead to untenable results. The Federal Farm Loan Act has no specific provision authorizing the Federal Farm Loan Board, upon appointing a receiver, to cause notice to be given calling for the filing of claims, as in the case of the National Bank Act (U. S. Code, Section 192); nor does the Federal Farm Loan Act contain any specific provision authorizing the Farm Loan Board to make a ratable dividend of moneys collected and paid

over by the receiver, as in the National Bank Act (U. S. Code, Section 194). It would scarcely be contended, however, that because of these omissions that, upon the appointment of a receiver the Board could not cause notice to be given calling for the filing of claims, or could not make a ratable dividend of moneys collected by its receiver. These powers were obviously intended to be included in the general powers given the Board to fulfill its duties and carry out the purposes of the Act, and so is the power to enforce stockholders' liability.

VI.

Due consideration has not been given to the construction placed upon the Farm Loan Act by the Federal Farm Loan Board, which is charged with the administration thereof.

In the case of *Sullivan* v. *Kidd*, 254 U. S. p. 433, this court said (l. c. 442):

> "While the question of the construction of treaties is judicial in its nature, and courts, when called upon to act, should be careful to see that international engagements are faithfully kept and observed, *the construction placed upon the treaty before us and consistently adhered to by the executive department, charged with the supervision of our foreign relations should be given much weight*" (our italics).

The same rule has been announced in the construction of statutes. The *Sullivan* v. *Kidd* case, however, is of particular interest, because in that case it appears that the court in reaching its conclusion took judicial knowledge of "the archives of the Department of State,"

also "public documents on file in the State Department" and also a "letter of the Secretary of State of October 2, 1920 (on file in the Department of Justice)," written after the case was argued.

We submit that likewise great weight should be given the construction which has been placed upon the Federal Farm Loan Act by the Federal Farm Loan Board. The Federal Farm Loan Bureau is under the supervision of the Federal Farm Loan Board and is a bureau in the Department of the Treasury (Section 3 of the Act; U. S. Code, Section 651). The Secretary of the Treasury is a member and chairman *ex officio* of the Federal Farm Loan Board.

The records of the Bureau show that throughout the entire period of the existence of the Act, there has never been a receiver appointed for a Federal Land Bank, nor for a National Farm Loan Association. Receivers have been appointed for three Joint Stock Land Banks.

There are twelve federal land banks in twelve districts, covering the entire continental United States (see Section 4 of the Act; U. S. Code, Section 671). There are approximately 4670 farm loan associations which operate in connection with the federal land banks of their respective districts (see Section 7 of the Act; U. S. Code, Section 720). There are forty-eight joint stock land banks in operation, and three joint stock land banks in receivership. *Joint stock land banks do not and cannot loan through farm loan associations.*

The three joint stock land banks in receivership are the Kansas City Joint Stock Land Bank of Kansas

City, Missouri, the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin, and the Ohio Joint Stock Land Bank of Cincinnati, Ohio. At the time when receivers were appointed for these three banks they had bonds outstanding in the aggregate sum of approximately sixty million dollars. Their bondholders (as shown by the records and reports of the Board), lived in practically every state in the Union, and some of them lived in foreign countries. They had outstanding stock aggregating approximately five million dollars, and had a total of approximately two thousand stockholders, living in almost every state of the Union, and some of them living in foreign countries.

Shortly after a receiver was appointed for the Kansas City Joint Stock Land Bank on May 4, 1927, the Federal Farm Loan Board was reorganized and the most careful consideration and painstaking effort has been exercised in the rehabilitation of the land bank system. Most intensive and complete supervision has been exercised, not only over the entire system, but over the three receiverships, to the end that the administration thereof might be economical and efficient and the losses to the bondholders minimized as much as possible.

After exhaustive investigation and with the advice of counsel, the Federal Farm Loan Board came to the conclusion that under the provisions of the Farm Loan Act, it was its duty to enforce the liability of the shareholders of the respective banks, if liabilities of the bonds exceeded the assets. At the direction and under the supervision of the Federal Farm Loan Board,

the respective receivers made a detailed, exhaustive and analytical investigation and valuation of the assets of their respective banks. In the case of the Kansas City bank, these assets were situated in five states. In the cases of the Milwaukee bank and the Cincinnati bank, the assets were situated in two states each.

On the basis of these valuations, the board found that in the case of each of these banks the losses were in excess of the entire capital stock of each of the banks even with the amount realized from the double liability of stockholders added. Accordingly the board made orders in the case of each of the banks levying a one hundred per cent assessment upon the shareholders, and making a requisition and demand upon the shareholders for the payment of their liability as provided by the Act. In the case of the Milwaukee Bank over five hundred thousand dollars has been paid upon the assessment by the shareholders. In the case of the Kansas City bank approximately two hundred and forty thousand dollars has been paid upon the assessment. In the case of the Cincinnati bank approximately forty thousand dollars has been paid upon the assessment. (All statements of fact above named are taken from records and reports of the board, which are Government documents.)

We submit that great weight should be given the construction thus placed upon the Act by the farm loan board, which is charged with the construction of the Act, and which has given continuous and unremitting thought and effort to the carrying out of the purposes thereof.

It would seem to be of unusual significance that in the eleventh annual report of the Federal Farm Loan Board to the speaker of the house of representatives, as required under the provisions of Section 3 of the Act (U. S. Code, Section 661), the federal farm loan board reported to the congress the action taken by it in levying an assessment upon the shareholders of the Bankers Joint Stock Land Bank of Milwaukee, and also in levying an assessment upon the shareholders of the Ohio Joint Stock Land Bank of Cincinnati, pursuant to the construction which the board has placed upon the Act. (See Eleventh Annual Report of Federal Farm Loan Board for the year ended December 31, 1927, House Document No. 324.) As required by the Act, this report was printed for the information of the Congress.

VII.

Confusion may result from some of the statements inadvertently made by the court in its opinion.

In the Court's opinion in the case at bar, it is stated (page 2):

> "But the joint stock land banks issue no such notes. They are created to make loans on farm mortgages *to members of an association in a territorially limited district*, and are relatively local affairs." (Italics ours.)

Under the terms of the Act, the farm loan associations may make loans in connection with *Federal* land banks of the district (see Section 7 of the Act; U. S. Code, Section 720). There is no provision in the Act permitting *joint stock* land banks to loan through as-

sociations. The case at bar has to do with a *joint stock* land bank.

Nor do we think joint stock land banks should be deemed to be local affairs. In the cases of the Kansas City bank and the Milwaukee bank, they have shareholders in most of the states of the Union and in foreign countries. It seems inconceivable that Congress could have intended that bondholders should be put to the enormous expense of enforcing the shareholders' liability through the innumerable ancillary proceedings that would be necessary if they must collect through a creditors' bill. It cannot benefit the shareholder. It simply means added expense and delay to the bondholder.

VIII.

Due consideration has not been given to the magnitude of the land bank system as compared with the National banking system in determining the intent of Congress.

The court in its opinion states that there is a plain reason for the difference between the National Bank Act and the Federal Farm Loan Act. The court said:

> "The National banks issue notes that constitute an important part of the currency of the country and that the United States has an interest in seeing paid. It is upon the bank's refusal to pay these notes that the comptroller of the currency is to appoint a receiver, and the authority to enforce the stockholders' liability adds a security to the national circulation that is of national scope. But the joint stock land banks issue no such notes. They are created to make loans on farm mortgages to members of an association in

a territorially limited district, and are relatively local affairs."

(We have shown above that the court's statement in regard to the functions of the joint stock land bank is erroneous.)

However, in considering the reasoning of the court in the above paragraph, it is interesting and important to note that on June 30, 1929, farm loan bonds were outstanding as follows:

Federal land banks		$1,179,872,340.00
Joint stock land banks:		
Going banks	$589,360,000.00	
Banks in receivership	59,240,085.00	648,600,085.00
Total		$1,828,472,425.00

On the same date the total amount of outstanding national bank currency was $649,452,000.00.

It therefore appears that on June 30th, 1929, there were farm loan bonds outstanding in an amount almost three times the amount of outstanding national bank currency, and the joint stock land banks alone had outstanding bonds approximately equal to outstanding bank currency.

The outstanding national bank currency is secured by United States bonds held by the treasurer and part assumed by the United States on deposit of lawful money for their retirement, and such currency is absolutely protected by such security (U. S. Code, Section 101). In addition the United States has a paramount lien upon the general assets of the bank to protect such currency. (U. S. Code, Section 194.)

The farm loan bonds outstanding under the farm loan system are secured by farm mortgages, which are not of the same class of security as Government bonds, and there is, therefore, an even stronger reason of policy for providing the protection of stockholders' liability in the case of farm loan bonds than there is in the case of national bank currency.

It must be clearly apparent that the United States Government has a very great interest in the protection of the tremendous volume of farm loan bonds sponsored by it, and issued with its authority and approval. The creation of a financial structure of the size and magnitude of the farm loan system carries with it very grave responsibilities. All doubts should be resolved in favor of the utmost possible protection for these farm loan bonds. If the security of these bonds is to be weakened, if the power of the board to require additional security is to be limited from lack of ability to enforce its requirements, then the bonds cease to become an attractive investment, and serious injury to the entire system may follow. But it seems to us that, for the reasons stated, such an unfortunate result is not legally necessary.

It is respectfully urged that the petition for rehearing ought to be granted.

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E. F. HALSTEAD,
Attorneys for Herman M. Langworthy, Receiver.

JOSEPH J. DANIELS,
Attorney for Floyd L. Rogers, Receiver.

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CHARLES ELMORE
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No. 39

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner*,

vs.

HOWARD GREENE, Receiver, *Respondent*.

On Certiorari to C. C. A. 7th Circuit.

MOTION OF BONDHOLDERS' PROTECTIVE COMMITTEE (FOR BONDS ISSUED OR ASSUMED BY KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI) FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING, AND BRIEF OF AMICUS CURIAE.

JAMES A. REED,
MASSEY HOLMES,
Counsel for said Amicus Curiae.

SMITH-GRIEVES, LAW PRINTERS, KANSAS CITY, MO.

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner,*

vs.

HOWARD GREENE, Receiver, *Respondent.*

No. 711.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

May it please the Court:

The undersigned, as counsel for Bondholders' Protective Committee for bonds issued or assumed by Kansas City Joint Stock Land Bank of Kansas City, Missouri, respectfully move this honorable court for leave to file the accompanying brief as *Amicus Curiae* in support of respondent's petition for rehearing.

Requested, counsel for respondent does, but counsel for petitioner does not, consent to the filing of this brief.

In these circumstances the brief is nevertheless submitted because of the conviction of these bondholders that this court has overlooked a most important *contractual right vested in bondholders by the terms of the Farm Loan Act.*

JAMES A. REED,
MASSEY HOLMES,
Counsel for said Bondholders' Committee.

In the Supreme Court of the United States

October Term, 1928.

J. R. WHEELER, *Petitioner,*

vs.

HOWARD GREENE, Receiver, *Respondent.*

No. 711.

BRIEF OF BONDHOLDERS' PROTECTIVE COMMITTEE FOR BONDS ISSUED OR ASSUMED BY KANSAS CITY JOINT STOCK LAND BANK OF KANSAS CITY, MISSOURI, AS AMICUS CURIAE IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING.

I.

STATEMENT.

The Kansas City bank is insolvent and is in receivership. There are outstanding approximately $44,376,500 farm loan bonds issued or assumed by that bank. The bondholders' committee at this date owns and holds up-

wards of $28,000,000 of these bonds. These bonds were purchased in the belief that in the event of insolvency, *there was a contractual obligation imposed on the Farm Loan Board to enforce the shareholders' liability for the benefit of the bonds.*

This point was not adverted to by this court in its opinion.

ARGUMENT.

Since the terms of the Farm Loan Act are necessarily provisions of farm loan bonds, those who by purchasing such bonds furnished the means of loans to farmers, became express obligees of the following promises by Congress (references are to Sections of U. S. C. A. Italics are ours):

> "That the issuing bank (821) 'is under Federal supervision';
>
> That such bonds (931) 'shall be deemed and held to be instrumentalities of the United States'—not merely written instruments of private business organizations;
>
> That the shareholders (812) 'shall be *held* individually responsible'—not merely that they shall *be* responsible, or legally liable, provided creditors care to enforce such liability;
>
> That the Board is (651) 'charged with the *execution* of this Act'; and
>
> That the Board shall have power (831 j) 'to exercise such incidental powers as shall be necessary or requisite *to fulfill its duties and carry out the purposes of this Act.*'"

Because these provisions are embodied in each bond as though therein set out verbatim, one who purchased bonds thereby furnished money to a governmental agency, became the holder of an instrumentality of the United States, by which instrumentality the United States, through its Congress, expressly promised such creditor that the shareholders *"shall be held responsible"* for that instrumentality—not, be it noted, a promise merely that the creditor himself might, if he chose, cause the share-

holders to be responsible, for the latter result would follow if the word "held" were omitted entirely.

The word "held" must be given some meaning, if possible.

The verb "to hold" is a verb of which the primary definitions are as follows: "To retain in any way so as to prevent falling, movement or *escape*" (Funk & Wagnalls, 1929); *"To keep from getting away"* (Murray's English Dictionary, 1897); "To *prevent* from falling or *escaping*" (Webster's New International, 1926).

"Responsible" means "liable to respond."

Applying these definitions, Section 812 clearly means: "Shareholders shall be *prevented from escaping* from their *liability to respond* for the debts of the bank."

Thus defined, this section promises *action* on the part of somebody, i. e., it is not a mere declaration of legal liability, for that would result if the word "held" were entirely omitted.

There is therefore an express assurance by Congress to the bondholder that *someone will prevent* the shareholder from escaping from his liability to respond, i. e., Section 812 imposes an *active duty* on *someone* so to prevent the escape of the shareholder. Congress has no *power* to impose such *active duty* on *creditors* of the bank, but of course has ample power to impose such duty on *an agency of its own creation*. That agency, the Farm Loan Board, is charged by Section 641 with the duty to *administer*, by Section 651 with the duty to *execute*, and by Section 831 (j) is given the *power* to do everything requisite to fulfill its *duties* and to carry out any *purpose* of the Act.

One express *purpose* of the Act is contained in Section 812, i. e., a purpose to *compel* the shareholder to respond, i. e., an active purpose to prevent the shareholder from escaping. The board is charged with the *duty* to *execute* this purpose (651), and by 831 (j) is given every power requisite to fulfill that duty and carry out that purpose.

These sections together form a part of the contract of every creditor, to-wit, that on becoming a creditor he has the assurance of Congress that the shareholder will be prevented (by someone other than the creditor) from escaping liability to respond for the debt to that creditor. This assurance by Congress can be fulfilled only by an agency under the control of Congress and that agency is the one charged with the *duty*, and given the *power*, to fulfill such assurance, i. e., the Board.

Therefore the power and duty to enforce the liability is not implied, but is *expressed* in these sections taken together.

It is submitted that this court can have considered neither the view of bondholders that these sections impose upon the Board the *active duty* to enforce for the bondholders the liability of the shareholders, nor the sapping of the security of these "instrumentalities of the United States" which must result if they are held not to carry an obligation of the Government, through its Farm Loan Board, to compel the shareholders to respond to the obligations of the bonds, but instead merely to confer upon the bondholder, if he can afford the time and the expense, a privilege to pursue the individual shareholders to their respective domiciles and there to enlist the aid of the courts in *holding* responsible shareholders whom Congress promised that the Farm Loan Board would *hold* responsible.

For these reasons it is earnestly requested that a rehearing be granted.

Respectfully submitted,

JAMES A. REED,
MASSEY HOLMES,
Counsel for Amicus Curiae.

SUPREME COURT OF THE UNITED STATES.

No. 39.—October Term, 1929.

J. R. Wheeler, Petitioner,
vs.
Howard Greene, Receiver of the Bankers Joint Stock Land Bank of Milwaukee, Wisconsin.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[November 4, 1929.]

Mr. Justice Holmes delivered the opinion of the Court.

The plaintiff is the Receiver of the Bankers Joint Stock Land Bank of Milwaukee appointed by the Federal Farm Loan Board. The defendant is a holder of stock of that Bank. This suit is brought to collect an assessment equal in amount to the par value of the defendant's stock, which was levied by the Federal Farm Loan Board and which the plaintiff was ordered to collect. The defendant demurred to the declaration that alleged these facts. The District Court sustained the demurrer and ordered judgment for the defendant. The plaintiff appealed and the judgment was reversed by the Circuit Court of Appeals. 29 Fed. (2d) 468. A writ of certiorari was granted by this Court to settle the question whether the Federal Farm Loan Board had power to levy an assessment, or the Receiver to maintain suit, for the enforcing of the stockholders' liability created by the Federal Farm Loan Act, July 17, 1916, c. 245, § 16; 39 Stat. 374. U. S. Code, Title 12, § 812.

The section (§ 29, Code, §§ 961, 963,) of the Federal Farm Loan Act that deals with insolvency of farm loan associations and joint stock land banks provides for the appointment of a receiver by the Farm Loan Board and states his duties and powers. It closely follows the words of the earlier National Bank Act, R. S. § 5234; Code, Tit. 12, § 192, stating the duties of the receiver of a bank that has refused to pay its circulating notes, and giving him power to take possession of books and assets and to collect debts, &c. But whereas the Bank Act goes on "and may, if necessary to pay the

debts of such association, enforce the individual liability of the stockholders", the Farm Loan Act stops short and has no such words. When so important a grant of power contained in the prototype is left out from the copy it is almost impossible to attribute the omission to anything but design, or to believe that it left to very attenuated implications what the model before it so clearly expressed.

There is a plain reason for the difference. The national banks issue notes that constitute an important part of the currency of the country and that the United States has an interest in seeing paid. It is upon the bank's refusal to pay these notes that the Comptroller of the Currency is to appoint a receiver, and the authority to enforce the stockholder's liability adds a security to the national circulation that is of national scope. But the Joint Stock Land Banks issue no such notes. They are created to make loans on farm mortgages to members of an association in a territorially limited district, and are relatively local affairs. It is contemplated that the bonds that they issue shall be secured by mortgages. There is not the same need that the stockholder's liability should be summarily disposed of behind his back in Washington (*Rankin* v. *Barton*, 199 U. S. 228, 232, *Casey* v. *Gatti*, 94 U. S. 673, 681,) rather than by the usual proceeding of a bill in equity which is brought in the neighborhood, in which the stockholder can be heard, and by which the assessment instead of one hundred per cent. can be adjusted to the specific case. *Terry* v. *Tubman*, 92 U. S. 156. The stockholders are to be held only "equally and ratably". And, to say the least, the bill in equity is the most likely way of reaching that result.

The establishment in Washington of a bureau 'charged with the execution of this Act, . . . under the general supervision of a Federal Farm Loan Board', c. 245, § 3; Code, § 651, and the putting of the administration of the Act under the direction and control of that Board by § 1, seem to us inadequate to supply the omission of this power from the express statement of what the Board and receiver may do when the bank is insolvent. The receiver had power to collect the assets of the bank, but the liability of stockholders is no part of those assets. It is a liability to creditors which the creditors may be left to enforce.

Decree reversed.